SENATE.

THURSDAY, *May 17, 1906.*

The Senate met at 11 o'clock a. m.

Prayer by Rev. ULYSSES G. B. PIERCE, of the city of Washington.

The Vice-President being absent, the President pro tempore, Mr. FRYE, took the chair.

The Secretary proceeded to read the Journal of yesterday's proceedings, when, on request of Mr. SCOTT, and by unanimous consent, the further reading was dispensed with.

The PRESIDENT pro tempore. Without objection, the Journal is approved.

SAC AND FOX INDIANS OF THE MISSISSIPPI.

The PRESIDENT pro tempore laid before the Senate a communication from the Secretary of the Interior, transmitting a letter from the superintendent of the Sac and Fox Indians of the Mississippi in Oklahoma remonstrating against the enactment of legislation providing for the readjustment of the annuities of the Sac and Fox Indians of the Mississippi between those residing in Oklahoma and those in Iowa, and to adjust existing claims between the two branches in regard to their annuities, etc.; which, with the accompanying papers, was referred to the Committee on Indian Affairs, and ordered to be printed.

EXECUTIVE COUNCIL OF PORTO RICO.

The PRESIDENT pro tempore laid before the Senate a communication from the Secretary of the Interior, transmitting, pursuant to law, a copy of the journal of the executive council of Porto Rico, third legislative assembly, second session, January 8 to March 8, 1906, etc.; which was ordered to be printed, and, with the accompanying paper, referred to the Committee on Pacific Islands and Porto Rico.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. W. J. BROWNING, its Chief Clerk, announced that the House had agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill H. R. 395, concerning foreign-built dredges.

DISASTER AT SAN FRANCISCO.

Mr. CULLOM. Mr. President, I ask to have read at the desk and put into the RECORD a letter from the Acting Secretary of State, giving a translation of a note received in relation to the San Francisco disaster. It did not get into the general record. I ask that the letter of the Acting Secretary of State and the accompanying paper be read.

The PRESIDENT pro tempore. Without objection, the Secretary will read as requested.

The Secretary read as follows:

DEPARTMENT OF STATE,
Washington, May 16, 1906.

Hon. SHELBY M. CULLOM,
Chairman of the Committee on Foreign Relations,
United States Senate.

SIR: Referring to the President's message of May 3, 1906, I have the honor to inclose a translation of a note from the Austro-Hungarian ambassador at Washington, conveying messages of sympathy from both houses of the Reichsrath in view of the disaster which has occurred at San Francisco.

I have the honor to be, sir, your obedient servant,

ROBERT BACON,
Acting Secretary.

(Inclosure from ambassador of Austria-Hungary May 10, 1906.)

[Translation.]

IMPERIAL AND ROYAL AUSTRO-HUNGARIAN EMBASSY,
Washington, May 10, 1906.

YOUR EXCELLENCY: As I am informed by the imperial and royal minister of foreign affairs, the Lower House of the Reichsrath authorized its president, at the session of April 24 last, to express to the United States Government through diplomatic channels the deep-felt sympathy of the Austrian Lower House on account of the earthquake catastrophe at San Francisco.

Likewise, the first president of the Upper House requested the imperial royal premier, on behalf of said House, to convey through the minister of foreign affairs to the United States Government the expression of the warmest sympathy at this great and deeply regrettable calamity.

In pursuance to instructions received, I have the honor hereby to communicate to Your Excellency these expressions of sympathy on the part of the Austrian Lower House and the president of the Upper House, and I avail myself of this opportunity to renew to you the assurance of my most distinguished consideration.

HENGELMULLER.

His Excellency Mr. ELIHU ROOT,
Secretary of State, Washington, D. C.

Mr. CULLOM. I ask also that another letter from the Secretary of State be read with reference to another government.

The PRESIDENT pro tempore. It will be read.

The Secretary read as follows:

DEPARTMENT OF STATE,
Washington May 12, 1906.

Hon. SHELBY M. CULLOM,
Chairman of the Committee on Foreign Relations,
United States Senate.

SIR: Referring to the President's message of May 3, 1906, I have the honor to inform you that the Argentine Republic was inadvertently omitted from the list of countries which expressed their sympathy with this Government on account of the disaster at San Francisco.

I have the honor to be, sir, your obedient servant.

ELIHU ROOT.

PETITIONS AND MEMORIALS.

Mr. PLATT presented the petition of Hugh J. Grant, of New York City, N. Y., and a petition of the National Grange, Patrons of Husbandry, of the United States, praying for the enactment of legislation to remove the duty on denaturized alcohol; which were referred to the Committee on Finance.

Mr. KEAN presented the petition of H. E. Pickersgill, of Perth Amboy, N. J., praying for the adoption of an amendment to the postal laws relative to newspaper subscriptions; which was referred to the Committee on Post-Offices and Post-Roads.

He also presented a petition of Columbus Grange, No. 58, Patrons of Husbandry, of Columbus, N. J., praying for the enactment of legislation to remove the duty on denaturized alcohol; which was referred to the Committee on Finance.

He also presented sundry petitions of citizens of Montclair, N. J., praying for the enactment of legislation to establish a children's bureau in the Department of the Interior; which were referred to the Committee on Education and Labor.

Mr. ALLEE presented petitions of I. T. Parker, lieutenant-governor, and sundry other citizens of Wilmington, Del.; of the State Council secretary, Junior Order United American Mechanics, of Wilmington, Del., and of Union Council, No. 159, Junior Order United American Mechanics, of Sandy Bottom, Va., praying for the enactment of legislation to restrict immigration; which were referred to the Committee on Immigration.

He also presented a petition of the executive committee of the Delaware Peace Society, of Wilmington, Del., praying for the enactment of legislation providing for an agreement with other governments to make the Philippine Islands neutral territory; which was referred to the Committee on Foreign Relations.

He also presented petitions of sundry citizens of Stanton, New Castle, and Wilmington, all in the State of Delaware, praying for the enactment of legislation to remove the duty on denaturized alcohol; which were referred to the Committee on Finance.

He also presented a memorial of the trustees of the New Castle County, Del., Workhouse, of the State of Delaware, remonstrating against the enactment of legislation to restrict the interstate transportation of prison-made products; which was referred to the Committee on Education and Labor.

He also presented sundry memorials of citizens of Georgetown and Wyoming, in the State of Delaware, remonstrating against the enactment of legislation to abolish private car lines; which were ordered to lie on the table.

He also presented petitions of Anna L. Cockran, of Baltimore, Md.; of the Westchester Woman's Club, of Mount Vernon; of the Sorosis, of New York City, and of the Federation of Women's Clubs of New York City, all in the State of New York, praying for the enactment of legislation to regulate the employment of child labor in the District of Columbia; which were referred to the Committee on Education and Labor.

He also presented a petition of the Organization of the General Slocum Survivors, of New York City, N. Y., praying for the enactment of legislation for the relief of the victims of the *General Slocum* disaster; which was referred to the Committee on Claims.

He also presented sundry petitions of citizens of Wilmington, Del., remonstrating against the adoption of the so-called "Warner-Foraker amendment" to the railroad rate bill; which were ordered to lie on the table.

Mr. GALLINGER presented a petition of the Chardonnet Artificial Silk Company, of New York City, N. Y., praying for the enactment of legislation to remove the duty on denaturized alcohol; which was referred to the Committee on Finance.

He also presented the petition of Joseph A. Burkart, of Washington, D. C., praying for the enactment of legislation to increase the salaries of justices of the peace in the District of Columbia; which was referred to the Committee on the District of Columbia.

Mr. SCOTT presented the petition of O. R. Noland, of the State of West Virginia, praying for the enactment of legislation to restrict immigration; which was referred to the Committee on Immigration.

HOT SPRINGS RESERVATION, ARK.

Mr. BERRY. I am directed by the Committee on Public Lands, to whom was referred the bill (H. R. 8976) to change

the line of the reservation at Hot Springs, Ark., and of Reserve avenue, to report it favorably without amendment, and I ask unanimous consent for its present consideration. It is very short, and will take only a moment.

The Secretary read the bill; and there being no objection, the Senate, as in Committee of the Whole, proceeded to its consideration.

The bill was reported to the Senate without amendment, ordered to a third reading, read the third time, and passed.

REPORTS OF COMMITTEES.

Mr. BERRY, from the Committee on Public Lands, to whom was referred the bill (S. 5913) to authorize the sale of certain lands in the city of Mena, in the county of Polk, in the State of Arkansas, reported it without amendment.

Mr. KITTREDGE. I am directed by the Committee on Interoceanic Canals to report a bill providing for the construction of a sea-level canal connecting the waters of the Atlantic and Pacific oceans. I ask that the bill be read twice and placed on the Calendar.

The bill (S. 6191) to provide for the construction of a sea-level canal connecting the waters of the Atlantic and Pacific oceans, and the method of construction, was read twice by its title.

The PRESIDENT pro tempore. The bill will be placed on the Calendar.

Mr. McLAURIN, from the Committee on Claims, to whom was referred the bill (S. 1816) for the relief of the Citizens' Bank of Louisiana, reported it without amendment, and submitted a report thereon.

Mr. FRAZIER, from the Committee on Claims, to whom was referred the bill (H. R. 12252) for the relief of the heirs at law of Massalon Whitten, deceased, reported it without amendment, and submitted a report thereon.

Mr. PERKINS, from the Committee on Forest Reservations and the Protection of Game, to whom was referred the joint resolution (H. J. Res. 118) accepting the recession by the State of California of the Yosemite Valley grant and the Mariposa Big Tree Grove, and including the same, together with fractional section 5 and 6, township 5 south, range 22 east, Mount Diablo meridian, California, within the metes and bounds of the Yosemite National Park, and changing the boundaries thereof, reported it without amendment, and submitted a report thereon.

Mr. CLAPP, from the Committee on Claims, to whom was referred the bill (S. 6166) for the relief of Edwin S. Hall, reported it without amendment, and submitted a report thereon.

Mr. MORGAN. I am instructed by the Committee on Interoceanic Canals, to whom was referred the bill (S. 5965) to establish the plan of a ship canal to be constructed in the Panama Canal Zone, ceded to the United States by the Republic of Panama, under the provisions of the treaty promulgated on the 26th day of February, 1904, to report it back adversely. I ask that it be put upon the Calendar with the adverse report. I ask that the report of the minority of the committee may be printed.

The PRESIDENT pro tempore. The Senator from Alabama asks that the views of the minority on the bill which he reports from the committee may be printed. Is there objection? The Chair hears none, and it is so ordered. The bill will be placed on the Calendar.

BILLS INTRODUCED.

Mr. CULLOM introduced a bill (S. 6192) granting an increase of pension to John Coker; which was read twice by its title, and referred to the Committee on Pensions.

Mr. ALLEE introduced a bill (S. 6193) granting an increase of pension to Elizabeth N. Dunn; which was read twice by its title, and referred to the Committee on Pensions.

Mr. PERKINS introduced a bill (S. 6194) to increase the efficiency of the classified civil service of the Government, for the retirement of superannuated and disabled employees therein, and to create a retirement fund therefor at the expense of the employees thereof; which was read twice by its title, and referred to the Committee on Civil Service and Retrenchment.

Mr. DICK introduced the following bills; which were severally read twice by their titles, and referred to the Committee on Pensions:

A bill (S. 6195) granting a pension to Margaret Hawthorn;

A bill (S. 6196) granting an increase of pension to William R. Perdue; and

A bill (S. 6197) granting an increase of pension to Charles E. Henry.

Mr. DICK introduced a bill (S. 6198) to correct the naval record of Charles A. Bradley; which was read twice by its title, and referred to the Committee on Naval Affairs.

He also introduced a bill (S. 6199) for the relief of John Thomas Power; which was read twice by its title, and referred to the Committee on Naval Affairs.

Mr. LONG introduced a bill (S. 6200) granting a pension to Charles W. Helvey; which was read twice by its title, and referred to the Committee on Pensions.

Mr. CLAY introduced a bill (S. 6201) for the relief of the village of Graysville, in Catoosa County, Ga.; which was read twice by its title, and, with the accompanying papers, referred to the Committee on Claims.

IMPROVEMENT OF CONNECTICUT AVENUE EXTENDED.

Mr. GALLINGER submitted an amendment proposing to appropriate $20,000 to grade and improve Conneticut avenue extended, intended to be proposed by him to the District of Columbia appropriation bill; which was referred to the Committee on Appropriations, and ordered to be printed.

PRESIDENTIAL APPROVALS.

A message from the President of the United States, by Mr. B. F. BARNES, one of his secretaries, announced that the President had approved and signed the following acts:

On May 16:

S. 4094. An act to amend section 4426 of the Revised Statutes of the United States; regulation of motor boats;

S. 4976. An act to grant certain land to the State of Minnesota to be used as a site for the construction of a sanitarium for the treatment of consumptives;

S. 2296. An act restoring to the public domain certain lands in the State of Minnesota;

S. 5498. An act granting additional lands from the Fort Douglas Military Reservation to the University of Utah; and

S. 5796. An act to authorize the construction of a bridge across the Missouri River and to establish it as a post-road.

TRANSPORTATION OF PETROLEUM.

The PRESIDENT pro tempore laid before the Senate the following message from the President of the United States; which was read, and, with the accompanying report, referred to the Committee on Interstate Commerce.

To the Senate and House of Representatives:

I transmit herewith a full report of the Commissioner of the Bureau of Corporations in the Department of Commerce and Labor on the subject of transportation and freight rates in connection with the oil industry, referred to in my message of the 4th instant, it having been delayed in printing.

THEODORE ROOSEVELT.

THE WHITE HOUSE, *May 17, 1906.*

REGULATION OF RAILROAD RATES.

The PRESIDENT pro tempore. The morning business is closed, and the Chair lays before the Senate House bill 12987.

The Senate resumed the consideration of the bill (H. R. 12987) to amend an act entitled "An act to regulate commerce," approved February 4, 1887, and all acts amendatory thereof, and to enlarge the powers of the Interstate Commerce Commission.

The PRESIDENT pro tempore. The question is on concurring in the first amendment made as in Committee of the Whole as amended. Without objection, it will be concurred in.

Mr. BEVERIDGE. I believe the first amendment is on page 1, beginning at line 7.

The PRESIDENT pro tempore. It is.

Mr. BEVERIDGE. I desire to move to strike out the word "and" on line 8, and the words "except natural or artificial gas," on line 1, page 2.

The PRESIDENT pro tempore. The amendment to the amendment will be stated.

The SECRETARY. On page 1, strike out the last word on the page, the word "and," and at the top of the page, the first five words on that page, "except natural or artificial gas."

Mr. TALIAFERRO. Is an amendment to the amendment in order?

The PRESIDENT pro tempore. One has just been offered by the Senator from Indiana.

Mr. TALIAFERRO. Is an amendment to that amendment in order?

The PRESIDENT pro tempore. It is not.

Mr. TALIAFERRO. I ask the Senator from Indiana to consent to a modification of his amendment. I send it to the desk and ask to have it read.

The PRESIDENT pro tempore. If there is no objection, the proposed amendment will be read.

The Secretary read as follows:

Except natural gas for municipal purposes.

Mr. BEVERIDGE. I will say to the Senator from Florida that I shall, after a moment, be very glad to accept his suggestion as a modification of the amendment which I have just moved. At the present time I wish the amendment to stand as I have offered it.

Mr. President, I do not desire to delay, and I shall not delay the Senate at all except to call attention to precisely what it is that we will vote on in voting upon this amendment. As the amendment was originally proposed by the Senator from Massachusetts [Mr. LODGE] it included the transportation of oil and gas by pipe lines. The question was asked of the Senator from Massachusetts, when the word "gas" had by some means or other gone out, why gas should be excluded and oil alone included in the transportation of these substances by pipe lines, and the Senator said gas ought also to be included.

Thereafter the Senate twice upon this subject voted the word "gas" into the amendment, so that the transportation by pipe line should include gas as well as oil. Thereafter the words "for municipal purposes" were added. So the Senate on this question twice voted to include the word "gas" as well as the word "oil." Thereafter a motion was made late in the day—I remember it very well—in considerable confusion, striking out the words "except for municipal purposes." Many Senators voting under a misapprehension voted for that, and when it was carried, it was found that the effect of it was to take natural gas transported by pipe lines out of the operation of this provision.

It is for the purpose of restoring natural gas to the provisions of this act, so that it will include natural gas as well as oil, that I make the motion to amend by striking out the words "and except natural or artificial gas." In that way, Mr. President, gas as well as oil will be included in the operation of the bill.

The PRESIDENT pro tempore. Does the Senator from Indiana accept the modification suggested by the Senator from Florida?

Mr. BEVERIDGE. Not just yet. I will do so in a moment.

The PRESIDENT pro tempore. The question is on agreeing to the amendment of the Senator from Indiana to the amendment made as in Committee of the Whole.

Mr. FORAKER. Mr. President, I want to address the Senate upon this amendment, and we will not be in a hurry about voting on it, I imagine, if it is to be insisted upon in this form. I have already addressed the Senate two or three times in regard to this matter. I think it is one of the most important matters connected with this legislation.

I wish to call the attention of Senators to what we have done and what we are now invited to do with respect to this kind of property interest. I have illustrated by telling of our situation at the city of Cincinnati. The interest I have in this amendment is one that belongs and pertains to that locality. I have already explained that we are just now taking steps to make a large investment of money. Five million dollars it is estimated will be required. The money is now being raised for the purpose of constructing and putting into operation a pipe line from the city of Cincinnati to the natural-gas fields of West Virginia, a distance of 274 miles, where the parties interested have acquired large fields from which they expect to draw natural gas.

That is a purely individual enterprise. It requires the amount I have indicated, because, according to the estimates of the engineers, it is found that that is the amount which will be required to put in the kind of a pipe which is necessary, a 16-inch pipe, as I am informed. The object is to expend that amount of money in order to take natural gas to the city of Cincinnati, not alone for municipal purposes, but also for manufacturing purposes, because the people engaged in manufacturing there, the people who have factories, mills, foundries, and machine shops want cheap fuel for those purposes. If when they have done that they are to be required to open the pipe line to everybody who may have natural gas to send to market, taking it to the other towns that may be along the line through which the pipe will pass; if that should be required, in addition to what they want to do for the city of Cincinnati, it will require still another pipe line, I suppose, and another expenditure of $5,000,000, so that the people who have no thought of becoming common carriers, who are simply trying to take care of their own local business, will be put into the business of common carriers against their will and be required to spend not only the $5,000,000 which their necessities require, but $5,000,000 more for a doubtful enterprise, in order that they may meet the requirements of the whim of somebody.

Mr. BEVERIDGE. Will the Senator permit me?

Mr. FORAKER. Yes; if the Senator does not take too much time.

Mr. BEVERIDGE. I will take no time except to address to the Senator the same question I addressed to him yesterday, when he was making the same speech he is making now. Might not the same situation the Senator describes be also true of oil transported in pipe lines?

Mr. FORAKER. Yes; I imagine it would be true of oil, and I do not think you have any more right to do it in the one case than you have in the other.

Mr. BEVERIDGE. That is the whole thing.

Mr. FORAKER. In other words, I think the individual or the corporation, because you may speak of it in either way, for the terms of this amendment are "any corporation or any person or persons"—any individual, therefore, has a right, in carrying on his business in connection with it, to make use of oil, to make use of natural gas, or to make use of water, and may at his own expense put down pipes to meet the necessities of that business. I do not think the Congress of the United States has any right to make of that man a common carrier because his pipe line happens to cross a State line.

Mr. BEVERIDGE. Then the Senator is not in favor of this provision with reference to oil any more than with reference to natural gas.

Mr. FORAKER. I am not speaking about oil, but about natural gas.

Mr. BEVERIDGE. The only point is that you must treat both alike.

Mr. FORAKER. To treat both alike is what I am trying to do; and I say you have no right to make a common carrier out of a private individual who is transporting for his own particular business and has no thought or purpose of accommodating the public.

Now, Mr. President, we adopted this amendment (and to this I call the attention of Senators) before we had adopted the amendment offered by the Senator from West Virginia [Mr. ELKINS], which prohibits any common carrier from carrying any product or commodity in which it has any interest, direct or indirect, as an owner of any kind.

Now, what will be the consequence? We spend $5,000,000 to carry our own natural gas from West Virginia to the city of Cincinnati. When we spend that money and are in a situation to serve our purposes, we are told by the Congress of the United States, "You are a common carrier and must carry for everybody except only for yourself. You can not carry anything that belongs to you." What is that except confiscation of property?

It may be that it is confiscation of oil. I leave that for the Senator to comment upon; but it is confiscation of any kind of property to do the same thing; and I want to say that it is not creditable to the Senate of the United States so to legislate. On the contrary, it seems to me it is entirely discreditable.

Now, Mr. President, just one word. It seems to me the difficulty about this is not met by the addition of the words "for municipal purposes," for that is but a very limited and restricted use. It is a municipal purpose to light the streets of a municipality, but it is not a municipal purpose to supply natural gas to citizens under private contract, to supply it to factories, foundries, and machine shops. That is not a municipal purpose. The way to remedy this is not, therefore, by adding words of that kind, for they do not help, but by adding after the word "transportation," as I suggested to the Senator from Massachusetts when he offered it, the words "for the public." The only person who is a common carrier is one who transports for the public.

It has been said that these pipe lines are organized under statutes that call them common carriers. That is true to a certain extent, but it does not necessarily make them common carriers in the sense that they have the right to exercise the power of eminent domain—certainly not outside the State of their creation, where this corporation has gone with its pipe line. To give the power of eminent domain must be a case where private property is being taken for a public use, for the use of the public generally, not for the interest of some individual or some particular locality, such as may be indicated in these instances.

Now, what is the objection to putting in the words "transporting for the public?"

Mr. BACON. Mr. President, I should like very much to hear the Senator, but when he turns his face in the other direction it is impossible to do so.

Mr. FORAKER. I thank the Senator for calling my attention to the fact that I was not speaking loud enough for him to hear, for I want everybody to hear, for if there is anything about this bill I am in earnest about it is this.

It seems to me, when we adopted this amendment, we acted unwisely, if I may say that without appearing to criticise the Senate, and surely it was unwise when later on we voted that we would not only make a private pipe line a common carrier, but that we would deny to it the right to carry the very product that it was organized and constructed to carry.

The result would be as I have said, and that is all I can say, and it seems to me that is enough. If our people build this pipe line, it is for our use and for our benefit, not for the pub-

lic. We do not want to go into competition with anybody else. If anybody else is to pipe gas out of that same territory, let him put in a pipe line, as we are doing.

Mr. BACON. Will the Senator permit me to ask him whether or not he has suggested any phraseology which will meet such a case as that which he now has in view?

Mr. FORAKER. Yes.

Mr. BACON. And at the same time not destroy the general purpose of the provision?

Mr. FORAKER. I think I have. I would be glad if the Senator from Georgia, who has the bill on the desk before him, will look at line 8, page 1, and see what I have suggested, namely, that after the word "transportation," the first word in the line, we insert "for the public," for I understand that any pipe line transporting for the public we would have the right to treat as a common carrier. But surely we have not reached the point where an individual can not have a pipe line of his own for water or for gas or for oil, or for anything else he may want it for. I called attention to the fact that this applies to persons as well as to corporations.

Mr. CULBERSON. Mr. President——

The PRESIDENT pro tempore. Does the Senator from Ohio yield to the Senator from Texas?

Mr. FORAKER. Certainly.

Mr. CULBERSON. I ask the Senator if his purpose is not carried out in the phrase beginning at line 3, page 2, "who shall be considered and held to be common carriers within the meaning and purpose of this act," because in the case he mentions the company will not be a common carrier when only carrying gas for itself, and it will not be brought within the meaning of this act according to its own provision?

Mr. FORAKER. I have not heard of anybody putting that interpretation on that language. I called attention to it when the matter was under consideration a few days ago, and a different view was taken of it. It does not make it very clear, but if you were to put in the words "for the public," after "transportation," then there could not be any question about it, and I can not understand why that should be objected to. If there is anybody transporting in a pipe line of any commodity, no matter what it may be, for the public——

Mr. STONE. Mr. President——

The PRESIDENT pro tempore. Does the Senator from Ohio yield to the Senator from Missouri?

Mr. FORAKER. Certainly.

Mr. STONE. I desire to ask the Senator from Ohio a question. He speaks of the situation at the city of Cincinnati and the purpose to connect the city with gas fields in West Virginia. Suppose his amendment should be agreed to, inserting the words "for the public," if gas should be transmitted to a reservoir, as I suppose it would have to be, and stored in that way in the city of Cincinnati and from thence transported to foundries and individual homes, would not that be a transmission for the public as much as if you transmit oil through pipes to reservoirs for sale? So how would that amendment help the Senator's case?

Mr. FORAKER. That shows the wisdom of having two or three minds directed to the same point. The Senator misapprehends what was in my mind, and what the Senator has just now expressed did not occur to me, the force of which I recognize. What I had in mind was any pipe line that is transporting for the public in the sense that it is transporting for all who bring to it the commodity which they want transported. I think that would be a common carrier under the law, and there is no objection to regulating it.

Mr. TELLER. I suggest to the Senator that perhaps he could use the term "transportation for hire" or "for compensation." I think that is better than the term he suggests.

Mr. FORAKER. Anything at all which indicates that when we get our property into operation it is not to be confiscated by act of Congress will satisfy me. I am not stickling for words, but I am for the substance.

Mr. SCOTT. Mr. President——

The PRESIDENT pro tempore. Does the Senator from Ohio yield to the Senator from West Virginia?

Mr. FORAKER. Certainly.

Mr. SCOTT. Mr. President, West Virginia perhaps is more interested in the discussion of this question than any other State in the Union, and I want to say that we have a number of pipe lines that are owned by corporations and that are owned by individuals to carry and transport gas from West Virginia out of the State. We have the West Virginia Natural Gas Company, we have the Manufacturers' Gas Company, and we have a number of lines that run to Pittsburg to individual manufacturers, who own their territory, drill their own wells, and carry their own gas to their own mills.

So I say, Mr. President, that this provision which the Senator from Indiana is trying to put into the bill will be a great injustice to our people and a great injustice to the people who are taking the gas out of our State. Now, Mr. President——

Mr. BEVERIDGE. Will the Senator allow me?

Mr. SCOTT. No, sir; I do not yield. I have not the gift of language which the Senator from Indiana has, and consequently I do not want to be interrupted.

Mr. President, the fact is we can not bring the large manufacturing establishments of Cincinnati and Pittsburg into the State of West Virginia. If we could, we would be very glad to build a wall around our State and keep the gas within our own borders. But as we can not do that, we want to have all the privileges that we can possibly get, so that our people can dispose of their gas and territory to these different manufacturers, to these different companies, and get as much for it as they can. With this restriction, it will stop development, just as the Senator from Ohio [Mr. FORAKER] says. The Cincinnati company which is coming into the southern part of our State at an expense of $5,000,000 is not going to come up there if the privileges under which they started out to build this line are taken away from it, and I hope it will not be the pleasure of the Senate to strike out, and insert the amendment the Senator from Indiana suggests.

Mr. LODGE. Mr. President, I think the amendment as it originally stood, "excepting natural gas for municipal purposes," was the correct form, but the question of natural gas is an entirely secondary question to my mind. The question involved here is the great traffic in oil. If you put in the words "transportation for hire" or "transportation for the public," you absolutely destroy this amendment so far as its effectiveness is concerned. The method of getting the oil is, as a rule, that the Standard Oil Company or the Pure Oil Company, which are the two great carriers of oil, buy it of the well owner and carry it, and they would immediately say they were not carrying for the public; that they were carrying for themselves. That is the reason why the word "public" or "transportation for hire" put in there would immediately wreck this amendment.

My object, I state frankly, in this amendment is to bring the pipe lines of the Standard Oil Company within the jurisdiction of the Interstate Commerce Commission. I do not see why that great corporation, with its enormous traffic in this article, should alone be exempted from the supervision and regulation of the Government. I care very little about the natural-gas feature in the amendment, but I do want to bring the Standard Oil Company somewhere within the reach of the law, and, owing to the method in which most oil is bought and handled, if you put in the words "for the public," after "transportation," you practically kill the amendment.

Mr. BEVERIDGE. Mr. President——

Mr. LODGE. Wait a moment; I should like to finish. These companies have the right of eminent domain, as I showed the other day. They are declared to be common carriers by statute in many of the States in which they operate. A letter was forwarded to me from a counsel of the Standard Oil Company hostile to this legislation, in which he admitted that they were common carriers east of the Mississippi.

Mr. President, there is no reason in the world why that corporation, with that great traffic in one of the most essential articles of use, should alone escape. They ought to be somewhere where they can be supervised and regulated. They carry oil for independent refineries. The independent refineries in other parts of the country try to get oil from their own wells or from other wells, and sometimes they will carry it and sometimes they will not; but they carry for independent refineries, showing that they are ordinary carriers when they choose to be. They hold, as it is now, the entire oil industry of the country by the throat. If there is nothing wrong, if everything is right, if they are public benefactors, they will not suffer from having the Interstate Commerce Commission look into this matter and see that the business is properly carried on. There need not be any apprehension in that regard.

Now, the additional amendment, known as the "coal-land amendment," has been brought up, and it is said it would be a great hardship on them, because they will not be able to carry their own oil under that amendment, as the railroads are forbidden from carrying their own coal, if they own the mines, for general sale. It does not prevent them from carrying the oil, I suppose, for their own use, but it will prevent them, undoubtedly, if they own the wells. Suppose it becomes necessary to separate these pipe lines and make the carrying of oil a distinct business from the production or refining of oil, is there anything wrong in that? We are about to compel the railroads to make some arrangement to get rid of their coal

lands all over the country, and either sell them or put them in the hands of holding companies. Why should we be so much afraid that it is going to be a great hardship on the Standard Oil Company if they are obliged to make an arrangement that their carrying lines shall be independent and that the carrying shall be general for all the oil producers of the country?

Mr. FORAKER. Mr. President——

The PRESIDENT pro tempore. Does the Senator from Massachusetts yield to the Senator from Ohio?

Mr. LODGE. Certainly.

Mr. FORAKER. Who has been talking about hardship upon the Standard Oil Company?

Mr. SCOTT. The Senator from Ohio was talking about gas.

Mr. LODGE. I am talking about oil. I am not disturbed about gas. I am talking about the effect of the amendment the Senator from Ohio proposes, inserting the word "public."

Mr. FORAKER. I have not offered any amendment, Mr. President; I only suggested it, and what I said to the Senator aside I say to him on the floor of the Senate—leave the amendment as it is. I do not care anything about the other provision. I want to protect natural gas in the way I have indicated.

Mr. LODGE. I did not suggest that anybody had said it would be a hardship.

Mr. TALIAFERRO. Mr. President——

The PRESIDENT pro tempore. Does the Senator from Massachusetts yield to the Senator from Florida?

Mr. LODGE. I yield to the Senator from Florida.

Mr. TALIAFERRO. I wish to ask the Senator from Massachusetts if he will not address himself to the constitutionality of an act that brings one of these pipe lines under the operation of this law and excludes all the balance of them. I am not a lawyer, and I should like to hear from a lawyer on that subject.

Mr. NELSON. Will the Senator from Massachusetts yield to me a moment?

Mr. LODGE. Certainly.

Mr. NELSON. I will in my own time answer that question and call the Senator's attention to a decision of the Supreme Court bearing on the point.

Mr. LODGE. All pipe lines owned by any company within the United States and within the Territories of the United States are made common carriers. What the Senator alludes to is a peculiar case in the Zone of Panama, an area which is under a peculiar jurisdiction and where the Government is ready to give a revocable license to anybody who chooses to lay pipe lines there. I do not care to enter into that discussion.

I took the floor to say this only because I want to preserve what I regard as the essential part of this amendment, and that is to bring the Standard Oil Company, which is the principal carrier, and the other carriers of oil within the jurisdiction of the Interstate Commerce Commission. I think it would be a gross injustice to leave them out. Owing to the manner in which the oil business is done, I have not the slightest doubt that if you put in the words 'transportation for hire," or the words "transportation for the public," you immediately release all those lines, because their method of doing business is to buy the oil first at prices which they make themselves, because they alone are able to take it to market.

Mr. GALLINGER. Mr. President, the Senator from Indiana [Mr. BEVERIDGE] has twice suggested that the amendment as it now stands was agreed to at a late hour in the day when there was great confusion in the Chamber.

Turning to the CONGRESSIONAL RECORD of May 4, it will be found that the debate on this amendment commenced on page 6502 and that the Senate adjourned, after it had indulged in debate covering seven pages of the CONGRESSIONAL RECORD, at the hour of 5 o'clock and 5 minutes p. m., having held an executive session in the meantime. It will be noted on page 6504 that on the amendment proposed by the Senator from Massachusetts as amended there was a roll call and there were seventy-five Senators who responded to their names. So it is perfectly apparent that the Senate perfectly understood what it was doing with reference to this matter.

It was the Senator from Massachusetts [Mr. LODGE] who suggested to the Senator from Ohio [Mr. FORAKER] that "in order to make the purport of the amendment clear it be made to read 'except natural or artificial gas.'" Upon that the amendment of the Senator from Ohio was adopted. Afterwards the Senator from Rhode Island [Mr. ALDRICH] moved to strike out "for municipal purposes," and that amendment was likewise adopted. Then, as I have said, upon a roll call, to which seventy-five Senators answered, the amendment of the Senator from Massachusetts as amended was agreed to.

I simply rose for the purpose of showing that the Senator from Indiana is mistaken when he says the Senate voted in confusion and did not know what it was doing when it adopted this amendment.

Mr. BEVERIDGE. Mr. President——

The PRESIDENT pro tempore. Does the Senator from New Hampshire yield to the Senator from Indiana?

Mr. GALLINGER. While other Senators have declined to yield, I know the Senator ought to have a chance, and I yield to him.

Mr. BEVERIDGE. I wish to say to the Senator that he will see by looking at the pages of the CONGRESSIONAL RECORD that that interpretation can not be correct for this reason: It shows that earlier the amendment was adopted which inserted "natural gas;" that then another amendment was adopted which excepted "natural gas for municipal purposes;" that the Senate had twice expressed its opinion upon this subject, and finally that they struck out "natural gas" altogether. So the Senate understood it in the first two votes but did not understand it in the last vote.

Mr. GALLINGER. That does not follow at all. It simply emphasizes what I have said, that the Senate, with great deliberation, went over this entire subject, and the fact that the Senate changed its views upon the question afterwards does not prove that the Senate did not understand what it was doing in the first place or in the latter case.

Mr. BEVERIDGE. Then the Senate did change its views?

Mr. GALLINGER. Certainly; and——

Mr. BEVERIDGE. And in fifteen minutes.

Mr. GALLINGER. And the Senator from Indiana frequently changes his views.

Mr. BEVERIDGE. But, Mr. President——

Mr. GALLINGER. If he did not, I would not regard him as highly as I do, because I know he does not belong to the class who never change their views.

Mr. President, that is all I care to say. The Senate perfectly understood what it was doing. If the Senate wishes to reverse its action, that is within its competency; but it is not proper to have it stated and let it go undisputed that we acted without intelligence in adopting the amendment which the Senator from Ohio desired to have incorporated in the bill.

Mr. NELSON. Mr. President, I desire briefly to call attention to one feature of this controversy, in regard to the proposition that pipe lines carrying oil can not be placed under the Interstate Commerce Commission unless they do a general business for the public. The question principally involved in that matter has been passed upon by the Supreme Court of the United States in a case which came from Minnesota. In 1893 the legislature of that State passed a law providing that all warehouses and elevators for storing and handling grain along the route of any railroad should be subject to the control and jurisdiction of the Minnesota railroad and warehouse commission. An elevator company at Lanesboro, in the southern part of Minnesota, denied the right of the State to exercise jurisdiction over that elevator, because they insisted that they were simply buying grain for their own use, for their own business; that they were not doing a general public-elevator business; that they bought grain from the farmers and shipped it to their own consignees at terminal points, and hence were not subject to public control.

The Supreme Court held that that position was untenable; that they were there occupying a position of a public market place, buying grain from every farmer who came there, weighing it, and grading it on their own scales, and therefore that it was a public business, and that the public had a right to control it.

So, Mr. President, with the oil pipe lines. The Standard Oil Company has a large pipe line running through the country. That pipe line has many feeders. Private parties build pipe lines to the trunk line to run the oil from their own wells, which are connected with the pipe lines of the Standard Oil Company, which company buys from these various small dealers. The different parties who have these feeding lines from their wells ship their oil to the trunk line. Their relation to the public is exactly the same as that of the elevator company to which I have referred in Minnesota. We have as much right to control such pipe lines as the public have a right to control that grain elevator at Lanesboro, in Minnesota. The Standard Oil Company purchases oil from the independent shipping oil owners, who have built little feeding lines connected with the trunk line of the Standard Oil Company. It purchases their oil and holds a monopoly of the use of the main line; and unless it is put under the control of the Interstate Commerce Commission, it can carry on its business with impunity, and practically destroy all the independent dealers and the independent lines.

If you put into the amendment of the Senator from Massa-

chusetts such an amendment as has been suggested, that these companies shall not be subject to the jurisdiction of the Interstate Commerce Commission unless they do a general business for the public, you will thereby entirely destroy the whole amendment, and will make it of no force and effect whatsoever. The amendment as it now stands is all right, and in respect to that matter should not be emasculated or changed.

Mr. FORAKER. Mr. President——

Mr. NELSON. As to the question of natural gas, I have no particular interest in that, but I think the amendment proposed by the Senator from Massachusetts ought to stand in the bill unamended and unchanged.

Mr. FORAKER. Will the Senator from Minnesota allow me to say a word in his time, as I can not do so in my own time?

Mr. NELSON. Certainly.

Mr. FORAKER. There seems to be a misapprehension among Senators as to why I contend that this amendment as it now stands shall remain without any change. The debate has arisen upon the motion of the Senator from Indiana [Mr. BEVERIDGE] to strike out the words "natural gas or artificial gas." I want the amendment to stand just as it now is.

Mr. TALIAFERRO. Mr. President, I inquire if the Senator from Indiana [Mr. BEVERIDGE] has accepted the modification I suggested?

Mr. BEVERIDGE. Mr. President——

The PRESIDENT pro tempore. Does the Senator from Florida yield to the Senator from Indiana?

Mr. TALIAFERRO. I yield to the Senator.

Mr. BEVERIDGE. For the purpose of permitting the Senator from Florida to offer the amendment which he has suggested as a modification of mine, I withdraw the amendment which I offered in order that the Senator may move his amendment, because I think that his amendment is better than the one I have offered.

Mr. TALIAFERRO. Mr. President, on page 1, line 8, of the bill I move to strike out, after the word "except," down to and including the words "artificial gas," in line 1, on page 2, and insert the language I send to the desk.

The PRESIDENT pro tempore. The amendment to the amendment made as in Committee of the Whole will be stated.

The SECRETARY. On page 1, line 8, after the word "except," it is proposed to strike out "water and except natural gas or artificial gas" and insert "except natural gas for municipal purposes."

Mr. TALIAFERRO. Mr. President, I have no interest near or remote——

Mr. SCOTT. Will the Senator allow me just a moment to inquire why limit the amendment which he is going to offer? Why not put in the word "manufacturing?" The great bulk of the gas taken out of our State is for manufacturing purposes.

Mr. TALIAFERRO. Because, Mr. President, I want to show to the Senate that the very line sought to be excluded from the operation of this act by the Senators from Ohio and West Virginia should, in the interest of the public, be brought under the terms and provisions of the act.

I have no interest whatever, near or remote, in oil pipe lines, natural gas, or anything of that character, but I do desire to see this bill become a law in such a form as will meet the very natural and just demands of the public at large. I am in favor of having these provisions extend to every agency engaged in interstate commerce, and I see no reason whatever why in including the pipe lines of this country a natural-gas pipe line should be excepted.

Mr. STONE. Mr. President——

The PRESIDENT pro tempore. Does the Senator from Florida yield to the Senator from Missouri?

Mr. TALIAFERRO. Certainly.

Mr. STONE. I ask the Senator what is his reason for including water pipe lines under the provision of this act?

Mr. TALIAFERRO. In consonance with my suggestion that every commodity, every agency entering into the interstate commerce of this country should be brought within the provisions of the act. That is my reason and my only reason.

I do not concede that the act applies except where the companies engaged in the business enter into the interstate commerce of the country, and where they do enter into the interstate commerce of the country I think they should be brought under the provisions of this act.

The distinguished Senator from Ohio [Mr. FORAKER], in addressing himself to this subject on Tuesday last, stated, in part, as follows:

> If when we get to the oil fields, having spent our $5,000,000, which we are having a great deal of trouble to raise——

Mr. FORAKER. The Senator will allow me to say that should be "gas fields." I was not going into oil fields.

Mr. TALIAFERRO. I presumed the Senator referred to gas, but I have read the RECORD as it is. The Senator from Ohio continued:

> and which we could not raise at all if it were known that this provision would become a law, we shall be required to receive all the natural gas other people may see fit to bring to our pipe and transport it from the place in West Virginia where the gas is found down to Huntington, we will say, dump out a lot of it there for the accommodation of that city, and on to Maysville, etc.

Mr. President, I want to know what the purpose of this act is unless it be to bring these carriers into such relations with the public that the public may be served by them? If this natural-gas pipe line from the gas fields of West Virginia to Cincinnati is conveying that gas for interstate commerce, there is no earthly reason why it should not be brought within the provisions of this act.

Mr. FULTON. Mr. President——

The PRESIDENT pro tempore. Does the Senator from Florida yield to the Senator from Oregon?

Mr. TALIAFERRO. I do.

Mr. FULTON. Do I understand the Senator to contend that he would prohibit any person from laying a pipe line for his own use exclusively?

Mr. TALIAFERRO. I do not. I make no such contention. I say that when the article conveyed enters into the interstate commerce of the country the medium of conveyance——

Mr. FORAKER. Mr. President——

Mr. TALIAFERRO. The agency of conveyance ought to be brought within the provisions of this law.

Mr. FORAKER. Mr. President——

The PRESIDENT pro tempore. Does the Senator from Florida yield to the Senator from Ohio?

Mr. TALIAFERRO. I do.

Mr. FORAKER. I do not take any issue with that proposition of the Senator, but that is not this case. The case I put is one where we are not transporting an article in order to put it into the interstate commerce of the country.

Mr. TALIAFERRO. Then my contention is, Mr. President, that that pipe line would not come under the provisions of this act.

Mr. FORAKER. All I want is to make it clear that it does not, and it is clear as it now stands.

Mr. TALIAFERRO. We can not make it clear, Mr. President, by inserting the word suggested by the Senator from Ohio without destroying the entire provision.

Mr. FORAKER. Mr. President, I do not want any other words. I want it to stand precisely as it stands now, but if there is to be any change I want it to be so changed that it will preserve what the Senator says already appears in the amendment.

Mr. TALIAFERRO. The Senator from Indiana [Mr. BEVERIDGE] was correct when he stated that the Senate had already twice passed upon this question. Subsequently, under the management—the skillful management—of the Senator from Rhode Island, the Senator from Ohio, and the Senator from Montana, the position, the judgment, the expression of the Senate has been absolutely changed as it appears in this bill to-day. The question was distinctly put by the Senator from Ohio to exclude his particular pet line from the operation of this bill and the Senate as distinctly voted it down.

Mr. FORAKER. The Senator referred to me in some way that I could not understand, as there was so much confusion. Will the Senator please indulge me to the extent of repeating what he said?

Mr. TALIAFERRO. It is almost impossible, Mr. President, for me to repeat what I said.

Mr. FORAKER. Well, the Senator referred to the Senator from Ohio about something, and I should like to know what it is.

Mr. TALIAFERRO. I think I stated that the Senator from Ohio distinctly submitted to the Senate a proposition to exclude his pet company from the operation of this act, and that the Senate quite as distinctly voted it down, and yet we find here in the bill this morning, as it lies on the desks of Senators, the action of the Senate, taken soberly and distinctly after debate of the question, absolutely reversed on this important point.

Mr. FORAKER. Very well. I will wait, however, until the Senator concludes.

Mr. CLARK of Wyoming. Mr. President——

The PRESIDENT pro tempore. Does the Senator from Florida yield to the Senator from Wyoming?

Mr. TALIAFERRO. I yield.

Mr. CLARK of Wyoming. I desire to say to the Senator from Florida that there is a very great fear, and, I think, a justifiable one, that if the word "water," which he proposes to strike out of his amendment, is stricken out, it will work irrep-

arable damage to the great irrigation works now operating and under construction in the West; and unless the Senator has some special reason why he desires that to go in, I suggest to the Senator that no harm will be done by not including that in the words to be stricken out.

Mr. BEVERIDGE. I hope the Senator from Florida [Mr. TALIAFERRO] will heed the suggestion of the Senator from Wyoming [Mr. CLARK].

Mr. TALIAFERRO. I will ask if that will make the amendment satisfactory to the Senator?

Mr. CLARK of Wyoming. I prefer the words as they are in the bill upon our desks, but if the Senator's amendment is to be adopted, I do not think it can be adopted without irreparable injury to those irrigation works of which I have spoken.

Mr. BEVERIDGE. I think water should be excluded when used for irrigation works and other public purposes.

Mr. TALIAFERRO. Mr. President, I have no objection to the suggestion. Water enters so slightly as a commodity into the interstate commerce of this country that I have no objection to putting into this bill anything which, if omitted, would impose a hardship on my friends in the West—none whatever—and if the Senator desires to propose a modification of the amendment which will meet his views, I shall be glad to hear it.

Mr. CLARK of Wyoming. I will ask the Senator if he has any insuperable objection to excepting the word "water" from his amendment to strike out?

Mr. TALIAFERRO. I will not object to that modification of the amendment, so that the amendment will read "except water and except natural gas for municipal purposes."

Mr. President, if I were a lawyer I would feel disposed to address myself to the question of the constitutionality of an act that imposes conditions upon one set of people and excepts all others in the same class of business; but, not being a lawyer, I shall content myself with speaking merely of the equities here involved. I know that the only ground upon which we can claim that this bill is a fair and proper one is to make it general in its application. I favor extending its provisions to all of the important agencies engaged in interstate commerce. It is for that reason, and that reason alone, that I have suggested this amendment, being moved to it by the fact that the Senate has already, as I said, on two different occasions voted to sustain it.

Mr. FORAKER. Mr. President——

Mr. TALIAFERRO. On yesterday, Mr. President, the bill was emasculated, on the suggestion of the Secretary of War, by eliminating the pipe lines being constructed across the Isthmus of Panama.

The PRESIDENT pro tempore. Does the Senator from Florida yield to the Senator from Ohio?

Mr. TALIAFERRO. I will, in a moment.

Mr. FORAKER. I thought the Senator's time had expired.

Mr. TALIAFERRO. To-day an effort is being made further to emasculate this bill by inserting the exception suggested by the Senator from Ohio. Mr. President, it is practically asked in this Senate to write the word "discrimination" in this paragraph of the bill. We can not afford to go before the country on a proposition to prevent discriminations when we ourselves propose to write discrimination in the law in this conspicuous manner. I hope that the Senate will go back to its original proposition, agreed to after this case was fully discussed, and place this amendment in the bill as it was before.

Mr. FORAKER. The Senator from Florida referred to me in the course of his remarks, but there was so much confusion in the Chamber, or rather in this part of it, that I did not hear distinctly what he said. I asked him to repeat what he said. After I had been told the nature of his remarks, he did repeat in part what I am told he said. The RECORD will show whether he repeated all of it. Senators sitting about me say that the Senator remarked that, after twice defeating my proposition to have natural gas lines excepted, then later, "under the skillful manipulation of the Senator from Ohio, his pet measure was taken care of."

Mr. TALIAFERRO. Mr. President——

Mr. FORAKER. Did the Senator make such a remark or am I in error?

Mr. TALIAFERRO. My recollection is that I said "under the skillful management," but if the Reporter says I used the word "manipulation," I stand by that.

Mr. FORAKER. Mr. President, all I wanted to know was whether or not the Senator had said it, in order that I might say to the Senator that there is no excuse whatever for him to make such a remark as that. I presented the proposition to the Senate, and it was debated very thoroughly. I want the Senator's attention, if he will honor me with it. After it had been twice voted down in the form in which I presented it, I abandoned it. Other Senators sitting about me in the Chamber, recognizing, as they expressed themselves here on the floor, that they had done an unwise thing and an unjust thing—some other Senator, without my knowing he intended to do it, offered the amendment which was adopted by the Senate by a unanimous vote. I did not know it was to be offered. I did not ask anybody to offer it. The first I knew of it, it was presented to the Senate, and when it came to a vote, without one word being said by me, it received seventy-five votes and not one vote against it.

Mr. BAILEY. Mr. President——

The PRESIDENT pro tempore. Does the Senator from Ohio yield to the Senator from Texas?

Mr. FORAKER. Yes.

Mr. BAILEY. Does the Senator refer, when he says it was unanimously adopted, to the vote on the pipe-line amendment?

Mr. FORAKER. To the vote on the amendment excepting natural gas.

Mr. BAILEY. Well, as a matter of fact, the exception was not adopted by a vote of 75 to nothing, but the general amendment was adopted.

Mr. FORAKER. Well, the general amendment was.

Mr. BAILEY. Including the particular amendment to which the Senator has referred; but that by itself was not adopted by a vote of 75 to nothing.

Mr. FORAKER. Yes——

Mr. TALIAFERRO. Mr. President——

Mr. FORAKER. Wait just a moment.

Mr. TALIFERRO. I understood the Senator was speaking in my time, and he might accord me an interruption.

Mr. FORAKER. I said in a moment I would grant the Senator the privilege.

The PRESIDENT pro tempore. The time of the Senator from Florida [Mr. TALIAFERRO] has expired.

Mr. FORAKER. I want to say now, so that the Senator will understand, that the RECORD was handed to me by the Senator from New Hampshire [Mr. GALLINGER], and my attention was called to the vote. I said, when I made the remark about a unanimous vote, that the vote had direct reference to this amendment to the amendment; but I recall, since the Senator from Texas [Mr. BAILEY] reminds me of it, that the vote probably was on the acceptance of the amendment as it now stands. This particular amendment was agreed to, as the Senator from New Hampshire now points out to me, without division.

Mr. BEVERIDGE. No; that was some other amendment.

Mr. FORAKER. Well, however it may be, Mr. President, please allow me to proceed. The amendment was thoroughly discussed. The Senate certainly knew what it was doing; it was thoroughly informed, and whether it was or not, what I want to call the Senator's attention to is the fact that he is in error when he says it was due to my management or my manipulation or my anything else. I do not do anything in a surreptitious way. I do not do anything, so far as I am aware, except in the open, where everybody can see and know and understand.

Mr. TALIAFERRO. The Senator ought not——

The PRESIDENT pro tempore. Does the Senator from Ohio yield to the Senator from Florida?

Mr. FORAKER. Certainly.

Mr. TALIAFERRO. The Senator ought not to put words in my mouth, Mr. President, that I did not use.

Mr. FORAKER. Will the Senator tell me what words I put in his mouth?

Mr. TALIAFERRO. I said a while ago, as I recall—and the notes of the stenographer will bear me out—that under the skillful management of the Senators from Ohio and Rhode Island and Montana the action of the Senate had been reversed. Now, the Senator from Ohio disclaims, and I am entirely willing to accord the credit to the other gentlemen.

Mr. FORAKER. I knew the Senator would recall his charge, so far as I am concerned, when he was informed of the truth. As I have stated, I had no knowledge that the amendment was to be offered, and was quite surprised when it was offered. Until I heard it read from the desk I had abandoned all hope of getting the kind of amendment I thought we ought to have. Now, Mr. President, I do not want to add to the discussion of the merits of this question.

Mr. CLAY. Mr. President, will the Senator allow me to ask him a question?

The PRESIDENT pro tempore. Does the Senator from Ohio yield to the Senator from Georgia?

Mr. FORAKER. Certainly.

Mr. CLAY. I want to understand this question in order to vote on it. I understand these gas companies to which the Senator referred are private companies, with private lines, hauling

their own gas, and the contention of the Senator from Ohio is this: In the event they are not excepted, then the Elkins amendment will apply to them and they can not haul their own gas, and, consequently, can not do business. Is that the contention of the Senator from Ohio?

Mr. FORAKER. That is the effect of it, as I understand, taking these two amendments together.

Mr. BEVERIDGE. The same would be true of oil under similar circumstances.

Mr. FORAKER. Let those who are taking care of oil look after that. I refer that to the Senator from Indiana, who has perhaps studied that feature, but it is true with us, as every man knows.

What I want to make clear is that I do not want to change this amendment. This discussion arises upon a motion made by the Senator from Indiana [Mr. BEVERIDGE] to strike out from the amendment as we adopted it in Committee of the Whole. I do not want that motion to prevail.

Mr. BAILEY. Mr. President——

The PRESIDENT pro tempore. Does the Senator from Ohio yield to the Senator from Texas?

Mr. FORAKER. Certainly.

Mr. BAILEY. Mr. President, if these companies, although incorporated, are engaged only in carrying their own gas and have not exercised the right of eminent domain, then no law of Congress could make them common carriers; but if they have exercised the great right of eminent domain, then they can not be heard to say that they are engaged only in their private business, because neither individuals nor corporations engaged in private enterprises are permitted to exercise the right of eminent domain. I ask the Senator from Ohio if the particular company which he has in mind has exercised the right of eminent domain?

Mr. FORAKER. It has not—that is, not yet.

Mr. BAILEY. Then no law can make it a common carrier against its will.

Mr. FORAKER. If the Senator will allow me to conclude, they are only in the preliminary stages. They are just now organizing the company and raising money to put in these pipe lines. They may have to exercise the power of eminent domain before they get to the gas fields, 300 miles away, but they hope they may not.

Mr. BAILEY. Then they can not be heard to say, after having exercised that right, that they exercised it for a private purpose.

Mr. FORAKER. Mr. President, I think if the Senator will look carefully at the authorities, he will find the test is not whether they exercise the power of eminent domain, but whether or not that power is exercised in the taking of private property for what is in the language of the authorities a public use. I do not think this would come——

Mr. BAILEY. It can not be taken for any but a public use.

Mr. FORAKER. Well, there are authorities, and authorities conferred by statute, and while it is true——

Mr. BAILEY. But no statute can confer an authority on any Commonwealth in this Union to take private property except for a public use.

Mr. FORAKER. Mr. President, I remember that a case was decided in the Supreme Court of the United States within the last year that came up from Colorado—I believe the Senator from Colorado will perhaps remember about it—where there was some question whether, under the statutes of Colorado, the corporation had a right to exercise the power of eminent domain to get a strip of ground along which to dig an irrigating ditch, I believe it was, through somebody's premises.

Mr. BAILEY. That is a public use.

Mr. FORAKER. The Senator says, without any trouble, that is a public use, but the Supreme Court of the United States, in deciding the case, said they would hold in that case, because of its particular facts, that it was a public use, but that the rule was not to be construed as a broad one applying to all such cases. It is a very instructive case. I do not want to stop, though, to discuss that, and the Senator will excuse me if I ask to pass on, because my time is about to expire.

What I want the Senator to understand is that I am not asking for any change in this amendment. I am simply asking that there be no change made. Leave it just as it is.

Mr. BACON. Mr. President, I desire to ask the Senator a question, with his permission.

The PRESIDENT pro tempore. Does the Senator from Ohio yield to the Senator from Georgia?

Mr. FORAKER. Certainly.

Mr. BACON. I want to ask the Senator as to the intention of this proposed pipe-line interest. Is it understood that the municipality, or whoever will own this pipe line, will own its own gas wells, or will it take gas from other producers?

Mr. FORAKER. It owns its own. It has gone into that territory and acquired these gas lands and is boring its wells and making the necessary preparations for securing the gas and raising the money with which to put in the pipe lines to transport the gas.

Mr. BACON. There is no contemplation of taking the gas from other people?

Mr. FORAKER. None whatever.

Mr. BACON. No power in their charter to do so.

Mr. FORAKER. None whatever. It might become necessary, possibly in order to get the gas, to buy the gas from somebody else; but there is no purpose at any time to transport the gas of anybody except its own gas.

Mr. BACON. Very well; it will be its own gas if it buys it from other people.

Mr. FORAKER. Yes.

Mr. BACON. But the point to which I desire to ask the attention of the Senator is this: If they accumulate their supply of gas, not only by using the product of their own wells, but by purchasing the product of wells of others, and, after that accumulation of it, transport it through their own pipes to Cincinnati, in another State, for the purpose of distributing it and selling it out to other parties to be used for manufacturing and other purposes, I suppose the Senator would concede that under those circumstances that would certainly be interstate commerce. It would be on all fours with the case cited by the Senator from Minnesota, where the private elevator men bought from individuals the product of their grain farms and after passing it through their elevators sold it to other individuals.

Mr. FORAKER. It is gas which it supplies to its own customers at its own place of doing business. This gas will be brought to Cincinnati, turned into the pipes through which artificial gas is now supplied, this gas being substituted for artificial gas—and that is all. The Senator may call that interstate commerce or the business of a common carrier if he likes, but it does not strike me it is either. It wants to substitute natural for artificial gas. It gets a permit, it goes to where the gas is, and it transports it for its own particular purpose.

Mr. BACON. Does the Senator dispute the proposition that if a municipality buys gas in West Virginia from other producers of gas, transports it through its own pipes to Cincinnati, and then sells it to individuals for manufacturing purposes that would be clearly an interstate-commerce transaction?

Mr. FORAKER. It might be; but we do not contemplate doing that. There might possibly arise in the future a contingency when they would do that. That illustrates one of the difficulties of making a pipe line like this a common carrier. Only the individuals who want to transport their own gas would construct it or put it in operation, for who knows when the gas will become exhausted? It may last one year or ten. Sooner or later we are bound to expect it will become exhausted. Then you have to take up your common-carrier pipes and do something else with them. Who will help do that?

Mr. BACON. If the Senator will pardon me a moment, this provision of the bill, while it affects directly his particular interest, is one intended to be entirely general and to affect all pipe lines used in transporting gas. Now, if there is such a pipe as that which I suggested to the Senator, where the owners of the pipe line buy gas from different producers and then transport it through their pipes to another State to be distributed to consumers, that would make a case where it would be eminently one of interstate commerce, and where, according to the spirit of the bill, as clearly set forth by the Senator from Florida, there ought to be Federal control.

Mr. SCOTT. Will the Senator from Georgia allow me to ask him a question?

Mr. BACON. If I am able to hear the Senator in the midst of the noise, I will be very happy to answer the question, if I can.

Mr. SCOTT. In what condition, if this amendment is adopted, will it leave the great steel and iron and pottery companies and others in Pennsylvania and Ohio who own their own pipe lines, control their own wells, and carry their own gas out of the State of West Virgina, for the sole purpose of manufacturing in their own factories?

Mr. BACON. I do not think they would be common carriers, and the bill would not apply to them.

Mr. SCOTT. They use the gas for manufacturing purposes.

Mr. BACON. It is for their own manufacturing purposes, as I understand. If the purpose is to get a supply of gas from West Virginia, carried through pipe lines to Pennsylvania, and to sell it to other manufacturing enterprises, that——

Mr. SCOTT. But it is for their own use. Bear that in mind. The company owns its own pipe lines.

Mr. BACON. I am endeavoring to bear it in mind, and I

am endeavoring to answer the question the Senator asked me. I say that if the pipe line is exclusively the property of the manufactory using the gas, and if they only use the gas which they themselves produce in West Virginia, they can in no sense be called a common carrier. They are not serving the public in any particular. But if they are buying gas in West Virginia and transporting it to Pennsylvania and selling it to others, they are common carriers, and we have to frame the bill so as to meet all cases. If it is entirely a private enterprise, in which the production and the transportation and the use in manufacture are solely the act of one industry or enterprise, it does not fall under the provisions of this bill. It does not reach such a case at all.

Mr. CULBERSON. Mr. President, I simply want to state, in view of the interruption I made a while ago of the Senator from Ohio, my construction of this statute as it appears now.

The first section of the bill as it has been amended provides in effect that the provisions of this act shall apply, among others, to *any* corporation or any person or persons engaged in the transportation of oil or other commodity by means of pipe lines, and that they shall be considered as common carriers within the meaning of this act. Nothing is left to the courts for construction, but the statute itself declares that any corporation, or any person or persons engaged in transporting oil by pipe lines—of course, as interstate commerce—are common carriers, and are declared to be such in this act of Congress, subject to the authority of this act, by the Interstate Commerce Commission.

Now, that is the first section. When we turn to the bottom of page 5 of the print of the bill of this morning we have this language:

> From and after May 1, 1908, it shall be unlawful for any common carrier to transport from any State, Territory, or district of the United States to any other State, Territory, or district of the United States or to any foreign country any article or commodity manufactured, mined, or produced by it. * * *

We have the first section declaring these corporations common carriers. We have the amendment at the bottom of page 5, and continuing on page 6, providing that it shall be unlawful for any common carrier subject to this act, after 1908, to carry any commodity produced by it or owned by it, except what may be necessary for the conduct of its business as a common carrier.

There seems to be no question about that construction, Mr. President, and it is for the Senate to say whether it desires to declare a corporation is a common carrier which does not carry for the public, but solely for itself, and whether, after 1908, no corporation or person shall transport any oil or other commodity produced by itself. These are the contradictory provisions of this law, as I see it.

Now, you take the oil companies in Texas, for instance. They are not common carriers in the sense that that term has been used by the law writers and the decisions, because they do not carry for the public for hire. But they transport their own oil, for instance, from the town of Humble or the town of Saratoga or other places to the Gulf of Mexico, and load it on ships for transportation to foreign countries and ports in the United States. That may be an interstate shipment. But the pipe lines which some of the companies use to conduct the oil from the place of its production to the Gulf are not used for the public and for the carrying of oil for the public, and yet this statute as we have it now declares that they are common carriers, and that after 1908 they shall not carry oil which they have produced or purchased.

Mr. SPOONER. Except for the public.

Mr. CULBERSON. They can not carry any more of it than is necessary for their business as common carriers, and, as a matter of fact, the companies to which I have referred are not in the business of common carriers.

Mr. FORAKER. I want to ask the Senator a question, and that is this: As the effect of leaving these two provisions stand we would have absolute confiscation, would we not, of that class of property?

Mr. CULBERSON. I do not know that it would go to that extent. They might go out of the business of producing oil and go into the exclusive business of carrying oil for the public and save their pipe lines in that way.

Mr. FORAKER. But if they did not have a supply from the public sufficient to occupy them, they would be practically out of the business?

Mr. CULBERSON. Surely. That is the construction I put upon this law. It is for the Senate to say whether it desires that that law shall stand, if that is the proper construction of it.

Mr. LODGE. I should like to ask the Senator from Texas a question before he takes his seat.

The PRESIDENT pro tempore. Does the Senator from Texas yield to the Senator from Massachusetts?

Mr. CULBERSON. I yield the floor.

Mr. LODGE. I want to ask the Senator a question before he takes his seat, if he will permit me.

Mr. CULBERSON. Certainly.

Mr. LODGE. Is it not true that, according to the provision on page 5, to which the Senator has referred, if a railroad owns coal lands, it has got to get rid of those coal lands or cease to carry the coal from the mines which it owns—that is, as a part of interstate commerce.

Mr. CULBERSON. I think so, but the difference is this: The prime business of the railroad is the carrying of freight, but the prime business of the oil companies is producing oil. That is the difference between the two cases. It is proper to drive a transportation company out of the producing business; but does it necessarily follow that it is right to drive the producing company out of the carrying business for itself?

Mr. LODGE. I confess I do not see a very broad distinction.

Mr. FULTON. Mr. President, I agree very largely with the position taken by the Senator from Minnesota [Mr. NELSON], that this provision as it stands is quite satisfactory. Certainly we ought not to go further, and I submit to the Senate this proposition: We are committing to a railroad commission an enormous amount of work, if they shall take care of and properly look after and regulate the legitimate transportation business of the country. We have included in that work the matter of pipe lines, so far as they shall be carriers of oil. That was done in response to a very evident public demand. The public temper requires that character of legislation.

But, Mr. President, I have yet to hear that there is any public demand for bringing within the operations of this bill pipe lines that are engaged in the business of conducting natural gas from the field to the market. It has been argued that simply because some of these corporations are public corporations in the sense that they have been endowed by their charters with the right of eminent domain, they are necessarily common carriers. I submit that that is not necessarily true. If a corporation, for instance, is engaged in carrying natural gas or artificial gas for the purpose of lighting a city, it would be perfectly proper to empower such a corporation to exercise the right of eminent domain. It would probably be necessary for it to establish pipe lines to the gas fields in order to bring the product to the city and distribute it. Its principal business, the main purpose of the corporation, would be the furnishing of gas to manufacturing institutions or for the purpose of lighting, and it would be necessary and incidental to the main purpose of the corporation that it should establish gas lines and employ the power of eminent domain. That would not make it a common carrier. That would not be the purpose for which it was organized, and it ought not necessarily to be made or declared to be a common carrier, even assuming that we can do that. I do not undertake to say we can.

But the main thought that influences me in taking the position against any enlargement of the provisions of the bill as it is is this: This Commission will have sufficient work to do if it shall properly carry out and discharge the duties that have already been imposed upon it, and there seems to be no particular demand for including these gas pipe lines, and therefore we ought not to broaden the operation of this bill beyond what seems to be a public necessity and a demand at the present time.

Mr. CLARKE of Arkansas. Mr. President, the primary purpose of the pending bill is to correct certain evils which have grown up in connection with the transportation of interstate commerce. It is barely possible that abuses in connection with the oil industry have attained such proportion as to be properly grouped in that class. But my information about the extent of the gas fields is not sufficiently accurate to justify me in believing that we ought to include the piping of natural gas in this bill, for the reason that there has been no such widespread complaint about abuses in connection with interstate distribution thereof as there has been in the case of the transportation of ordinary freight by railway carriers. The natural-gas business is a peculiar one. It is highly speculative, and, as the Senator from Ohio has well said, no one can tell whether a certain field will produce for one year or ten. It is not a commodity whose extent and supply are capable of visible and definite measurement; it is not like the forests or the fields, where tonnage is perpetually to be obtained. And in the case of a gas field, unless a pipe line is constructed by the gas company itself the gas will not be transported at all.

The amendment would be bad enough if the intention was to regulate the cost of carrying gas where there were gas wells

offering gas for transportation other than the ones owned by the company able to build and operate the pipe line. But there is no justice at all, in my judgment, in providing that after the 1st of May, 1908, the gas company shall go out of the business of transporting its own oil and sell out its pipe lines to an independent corporation. It might possibly be that the wells owned by the corporation that originally constructed the pipe line would be the only interest in the field. The gas company would be put in a condition in conforming to what is now known as the "Elkins amendment," where it would have to dispose of either its gas wells or its pipe line, if it could find anybody to purchase either separately, or to adopt some plan of evading the law, which is the most probable course.

I think we had better confine this bill to the correction of the evils that have been so conspicuous as to challenge the attention of the country and to demand a remedy at the hands of Congress.

As long as the provision remains in the bill depriving the common carrier of the right to haul its own products as interstate commerce after May 1, 1908, I think we ought to be careful how we include pipe lines. In our State we have some little indications of gas. What they will amount to can not now be foretold. There is no reason why in the outset the gas business should be penalized, and these people notified that after May 1, 1908, they will not be allowed to transport their own products through their own pipes. I do not think that is a rational disposition of the matter.

With respect to water, I am likewise doubtful. I believe water ought to be stricken out. Outside of the transportation of freight, as that term is popularly understood, I think the only industry that ought to be included in the bill is that of oil.

Mr. BEVERIDGE. I ask that the amendment proposed by the Senator from Florida may be stated.

The SECRETARY. On page 2, line 1, it is proposed to strike out the words "or artificial gas" and insert in lieu thereof "gas for municipal purposes."

Mr. TALIAFERRO. "Natural gas."

Mr. FORAKER. Where does that come in?

The SECRETARY. After the word "natural," in line 1, page 2, strike out the words "or artificial gas," and insert in lieu thereof the words "gas for municipal purposes."

Mr. FORAKER. That is what I hope will be voted down.

Mr. TALIAFERRO. I accepted the amendment proposed by the Senator from Wyoming "except water and except natural gas for municipal purposes."

Mr. BEVERIDGE. Mr. President, my sole and only interest in this matter is that the principle of equality shall be applied to this legislation. We include coal within the provisions of this act, which is used for fuel and that is right. We include oil within this act, which is a product of coal and which is used for fuel, and that is right. Why should we not also include in this act gas, which is a product of oil and is also used for fuel?

The Senator from Ohio [Mr. FORAKER] says that he is speaking about gas, and therefore is not interested in oil. The Senator from Massachusetts [Mr. LODGE] says he is speaking about oil, and therefore is not interested in gas. But ought not the Senate to think about both and include both within the provisions of this act?

Mr. President, not one reason has been here adduced why, as a general proposition, gas should not be included within the provisions of this act as well as oil, except the specific instance cited by the Senator from Ohio. But much as we would all like to legislate for specific instances, laws are made for general application. I do not think we ought to discriminate in favor of the Standard Oil Company; neither should we discriminate against it—this is a Government of laws and not of instances. All offenders alike should be subject equally to the reign of law. Why should we specify one and not also apply the same provision to other companies? Why should we include oil and not apply the same provision to gas, which is a product of oil and is used for the same purposes?

It was suggested here the other day that rich men should have speedier punishment than the poor. That is destructive of that equality of rights which is the heart of liberty. Let rich and poor be equal before the law. That is all that either has a right to ask. Whether a company be little or big, whether it be engaged in the business of transporting gas or of transporting oil, certainly the same general law ought to apply. All companies, little and big, all men, rich and poor, should have the same treatment.

Mr. President, it has been suggested that it would very injuriously affect certain properties, certain manufactures, and certain other business located——

Mr. SPOONER. Mr. President——

The PRESIDENT pro tempore. Does the Senator from Indiana yield to the Senator from Wisconsin?

Mr. BEVERIDGE. Yes.

Mr. SPOONER. If the Senator's proposition is correct, why should not water companies be included?

Mr. BEVERIDGE. Water companies should not be included, for the excellent reasons given——

Mr. FORAKER. Mr. President——

Mr. BEVERIDGE. Pardon me. Wait until I answer the Senator from Wisconsin first. I said there had not been given one public reason, generally applicable, why gas should not be included. If one reason, which is sufficient, which is generally applicable, could be adduced by the Senator why gas should not be included, I would not support the amendment of the Senator from Florida. But in the case of water such a public and general reason has been given. It is used extensively for irrigation purposes. That is a public reason and not a private reason, not a personal reason. It is a thing which affects great masses of people and not one or two companies. That is my answer to the Senator from Wisconsin.

Mr. FORAKER. Let me ask the Senator why, if we are not to take individual interests into consideration, we do not include common carriers by water in this bill and make this bill applicable to them?

Mr. BEVERIDGE. Perhaps carriers by water should be included.

Mr. FORAKER. The Senator might have made a motion to amend. He would have had the support of at least one other Senator if he had seen fit to do so. But they were left out because, by common consent, there is really no complaint about them, though I think there ought to be complaint, because they do more discriminating in freight charges than any other class of carriers.

Mr. BEVERIDGE. I want to call the particular attention of the Senator from New Hampshire [Mr. GALLINGER] to how this question arose. I think I can show to the Senator from Florida and to every other Senator that there was not any management by the Senator from Ohio or anyone else, skillful or otherwise, in this thing. It is one of the incidents that occurs daily in legislation.

The Senator from Massachusetts offered an amendment, as to every part of which he was equally enthusiastic, which included gas. Later on, by some process, I do not know what, gas went out, and I rose and asked the question why gas should not be included as well as oil. And the answer was that there was no reason in the world. Therefore, the Senate voted to include gas. Thereafter it was thought that gas for municipal purposes should be excepted and the words "except for municipal purposes" were added. So the Senate twice voted to put gas under the operation of this bill, except for municipal purposes. Thereafter, though I am sure not by any management, but in a moment of confusion, a motion was made by some Senator to strike out the words "except for municipal purposes." And many Senators voted for that, under the impression that it struck out all exceptions. But afterwards we found it did not.

Now, as to what the Senator from New Hampshire and the Senator from Ohio said about those votes, if the Senate was right in its first two votes upon this question, which were adopted without division, then it was wrong on its last vote upon this question. It was not wrong because it had been "managed." It was wrong because the Senate had changed its mind.

Mr. GALLINGER. It got new light.

Mr. BEVERIDGE. No; on the contrary, there was not one single word of debate upon the last motion which put this bill in the position in which it stands in this respect.

Mr. GALLINGER. The Senator thinks; he does not know.

Mr. BEVERIDGE. It may be; but the confusion at that time was so great that it did not indicate that the Senate was particularly thinking about this question. If it was, I will ask the Senator how it happened that the Senate so quickly, without a word of debate, without a reason being given, in fifteen minutes changed its mind from two deliberate votes which had been taken after full debate.

So, Mr. President, that is the way this matter arose. That is the reason why——

Mr. GALLINGER. Mr. President——

The PRESIDENT pro tempore. Does the Senator from Indiana yield to the Senator from New Hampshire?

Mr. BEVERIDGE. Certainly.

Mr. GALLINGER. If the Senator will permit me, I think if he goes to the RECORD (and it includes, I believe, a great deal more than I suggested this morning) he will find that the motion made by the Senator from Ohio was once voted down and the Senator asked for the yeas and nays and we did not give

them to him. That is the record. Subsequently at the suggestion of the Senator from Illinois [Mr. HOPKINS], the words "except water and except natural or artificial gas for municipal purposes" were inserted.

Mr. BEVERIDGE. Were voted in?

Mr. GALLINGER. Were voted in.

Mr. BEVERIDGE. Without a division.

Mr. GALLINGER. Without a division. Subsequently the words "except water and except natural or artificial gas for municipal purposes" were again voted in.

Mr. BEVERIDGE. That is correct.

Mr. GALLINGER. Again, the Senator from Rhode Island [Mr. ALDRICH] moved to strike out "for municipal purposes," and that was agreed to.

Mr. BEVERIDGE. That was agreed to without debate, and that is the vote to which I refer.

Mr. GALLINGER. Then a vote was taken on the amendment as amended, and seventy-five Senators, who, I suppose, knew what they were voting on, voted for it. That is the chronological history of this very important question, which the Senator says was adopted in confusion when Senators did not know what they were doing.

Mr. BEVERIDGE. The Senator confirms precisely what I said, except that he adds one more count to the indictment. As the Senator has shown, and as I said, the subject of gas was twice voted in without limitation as to municipal purposes, and the Senator from Ohio called for the yeas and nays; and then, on the question of voting out gas, which is the third time——

Mr. FORAKER. There was no third time about it. One vote was taken without a division. I called for the yeas and nays, and the Senate did not give me a second.

Mr. BEVERIDGE. Very well, then, let it stand as I originally stated it and as the Senator from New Hampshire confirms it. That is, the Senate, after full debate, voted gas in without a division.

Mr. FORAKER. Will the Senator let me interrupt him?

Mr. BEVERIDGE. Certainly.

Mr. FORAKER. The Senator sits near me, and he must know the truth of what I stated a while ago, that after the last vote was taken Senator after Senator came to me and said they voted under a misapprehension, and there was a general regret that the vote had been settled. Thereupon the amendment was offered which was adopted without a division.

Mr. BEVERIDGE. Of course that is true if the Senator says it is; but let me tell the Senator what my experience was. After the final vote, which reversed the first two votes of the Senate and which was had without debate, whereas the first two votes were had with debate, several Senators came to me, or, rather, we engaged in talk, and we all agreed that we had voted under a misapprehension and did not know that we were voting to strike out natural gas. But the fact remains that twice the Senate voted this matter in without a division, after full debate, and then they voted it out without debate and without a division.

Mr. President, as I said at the beginning, I now close by saying that I have no interest at all in supporting the amendment of the Senator from Florida, except only the interest of seeing the rule of equality applied to this law. When I see a Senator rise and give a general public reason why any subject should be excluded from a law, I should be then willing to vote for the proposition, but until I do hear such a reason I shall be compelled to support a proposition which includes gas which is used for fuel as well as oil which is used for fuel, as well as coal which is used for fuel. Why should coal, why should oil, be included, and why should gas, which is merely a form of oil, be excluded? I have yet to hear one public and general reason why this exclusion should be made.

Mr. LODGE. If the Senator will excuse me a moment, I desire simply to ask him a question.

Mr. BEVERIDGE. Certainly.

Mr. LODGE. The Senator referred to me as equally enthusiastic. I favored his amendment and do now, and I shall vote for it because I think it is just, but when he said I was equally enthusiastic I think he must have forgotten the day this debate occurred. I will merely quote one sentence, and I repeated it many times. In answer to the Senator himself, I said:

> I will say to the Senator from Indiana that I agree with him entirely as to the soundness of his proposition, but I do not desire to hamper this amendment with any unimportant points.

Mr. BEVERIDGE. Very well. I am willing to agree that the Senator was and is unequally enthusiastic. That is all. The reason why I made that remark was merely because I felt that, in the Senator's flaming indignation against the Standard Oil Company transporting its products, he was somewhat cooling toward the transportation of natural gas, which is a product of oil.

Mr. GALLINGER. If the words "for municipal purposes" were used, would the Senator vote for it?

Mr. BEVERIDGE. Certainly. That is the amendment of the Senator from Florida, and I withdrew my amendment because I thought the amendment of the Senator from Florida was much better.

Mr. CLARKE of Arkansas. I wish to suggest to my friend from Indiana that every objection to the amendment would be cured if he put at the end of the provision——

The PRESIDENT pro tempore. Is the Senator from Arkansas speaking in this own time or in the time of the Senator from Indiana?

Mr. CLARKE of Arkansas. I am only calling attention to the fact that every objection to the amendment would be removed by making an addition to another clause, by inserting at the end of the matter that appears in the first paragraph on page 6, "provided that this provision shall not apply to carriage by pipe lines of commodities other than oil." That would relieve from the condemnatory provisions of that part of section 1 these gas and water lines. They would be permitted to carry on their own business, but would be subject to regulation as to price for carriage of other business.

Mr. FORAKER. Will the Senator send his amendment to me?

The PRESIDENT pro tempore. The Senator from Arkansas is not in order. He has already addressed the Senate on this amendment.

Mr. TELLER. Mr. President, I wish to say a word in reply to the suggestion made by the Senator from Ohio with reference to the decision he referred to. That decision was made in a case that came up from the State of Utah and not from Colorado.

Mr. FORAKER. I was going to so state to the Senator. I sent to the Library and got the case, and I found it was Utah instead of Colorado.

Mr. TELLER. It is one involving a principle very well established, as asserted by the Senator, in our part of the country. In the arid regions we have an entirely different law from that in the eastern country or in what we call the "rain belt." The Supreme Court of the United States in several cases have recognized the difference, and have recognized the fact that the law is different in Colorado, Montana, and Utah from what it is in New York and Pennsylvania. There is there no doctrine such as exists in Pennsylvania and New York of riparian ownership or riparian rights.

The constitution of Colorado, California, Utah, and, I think, of all the Western States, provides, in substance, that the water of the streams belongs to the States and is to be kept and used for public use. So we have a different condition as to the right of eminent domain from what they have in a State where the water is sought, perhaps, to be taken for a mill race or something of that kind. When the western country was settled, we found a law there which probably had existed for a thousand years in the settled portions, taking New Mexico, where there had been a settlement and where proper irrigation had been in use for untold ages. We found not a written law, but an unwritten law, with reference to the use of water. We have applied that in the western country and the courts have sustained that rule.

The constitution of California provides that the right of eminent domain may be exercised in the case of ditches and various other things, and the courts, both at home and the United States Supreme Court, have held that that applies to an individual case. If a man has a farm and chooses to bring water on it and his neighbors object to his crossing their land, he can cross that land, although nobody is to use the water except himself. They have declared that the use of water for irrigation purposes is a public use. I have before me three decisions of the Supreme Court (I am not going to read them in the few moments I have) recognizing that to be the law, in which the court says in distinct terms the law is entirely different in the arid region from what it is in the East.

The Senator from Indiana says, I think, that the water companies should be included. If the Senator from Indiana were at all familiar with the conditions, he would never have made that statement.

Mr. BEVERIDGE. Mr. President——

The PRESIDENT pro tempore. Does the Senator from Colorado yield to the Senator from Indiana?

Mr. TELLER. Certainly.

Mr. BEVERIDGE. The Senator entirely misunderstood me. I said that a general and public reason had been given why

water should be excluded from the operation of this act, and I said that if a reason equally strong, equally public, and equally general could be given for gas I would also vote to exclude that. The Senator misunderstood me.

Mr. TELLER. I certainly misunderstood the Senator.

Mr. BEVERIDGE. Yes, indeed.

Mr. TELLER. I supposed he said that water ought to be included.

Mr. BEVERIDGE. Not at all, but the exact reverse. I said that a general and public reason had been given why it should be excluded from the operations of this act.

Mr. TALIAFERRO. Mr. President——

Mr. TELLER. The junior Senator from Montana [Mr. CARTER] objected the other day to the terms used here, and we excepted water because he thought it might interfere with the irrigation of our arid region. I agreed with him in that.

The PRESIDENT pro tempore. Does the Senator from Colorado yield to the Senator from Florida?

Mr. TELLER. Certainly.

Mr. TALIAFERRO. I presume the Senator understands that water is excepted under the bill?

Mr. TELLER. I understand that; but I did understand the Senator from Indiana to say that he thought it ought to be included, and therefore I wanted to say a few words on that subject.

Mr. BEVERIDGE. Oh, no; not at all.

Mr. TELLER. Now, Mr. President, I want to say merely a word about these private companies. If I build a railroad to a forest and haul the logs to a mill and have them converted into lumber, and that is the only use I put it to, I do not believe that I can be made by an act of Congress a public carrier.

We have, I will venture to say, in the State of Colorado, the same in Utah and the same in Montana, several hundred railroads and tramways and bucket lines, sometimes 3 or 4 miles long and sometimes even less. In the State of Washington, going up the Snake River, you will see these bucket lines bringing wheat from the high table-lands down to the river. The people who produce the wheat own the lines. The people who produce the ore that is transported over the lines own the lines. Even if they have the right of eminent domain given to them by the constitution of their States, as we do have, they can not be made public carriers. You can only make a public carrier when in fact it becomes a public carrier. If the city of Cincinnati wants to build a pipe line for her own use to bring gas or to bring water, it does not make any difference which, there is no reason on the face of the earth why we should declare it a public carrier, and, in my judgment, it would be a futile act if we attempted it. We can not do it.

I have heard it stated around here in the last hour that there are two things which must be determined: First, does the concern, whatever it be, whether individual or corporate, do interstate business? If it does, and does it for the public, then it is a common carrier.

I have heard it stated that they would become common carriers if they had exercised the right of eminent domain. That I deny, Mr. President, for the right to exercise eminent domain depends not upon our authority, but upon the authority of the State that gives them their existence. As I said, our Constitution and our statutes confer upon individuals, when engaged in mining or in irrigating or in farming, the right to condemn land, because the country could not be habitable unless that right were given.

The case the Senator from Ohio called attention to arose upon a conflict between a farmer who wanted to carry water across another man's land to his own, where the whole question involved was only $40. This shows that at times it is impossible to secure the right of way by any fair method. Recognizing that fact the Supreme Court of the United States declared in three cases I have on my table, and I could produce half a dozen more, that under those conditions the State had a right to declare that it was a public use, and the right of eminent domain could be exercised by the individual for his individual use and his individual benefit and nobody else's.

Mr. ELKINS. I should like the attention of the Senator from Florida [Mr. TALIAFERRO], who proposed this amendment. I ask the Senator from Florida if his amendment confines the exception to gas for municipal purposes?

Mr. TALIAFERRO. It does.

Mr. ELKINS. What do you mean by the words "for municipal purposes?"

Mr. TALIAFERRO. I will let the Senator define that.

Mr. ELKINS. I should like to ask the Senator if that means the cities themselves having the gas or allowing a company that brings the gas there to light the cities and to furnish gas as fuel for domestic purposes—that is, to the people—for light and fuel, but not for manufacturing purposes?

Mr. TALIAFERRO. I take it "municipal purposes" means the material that is paid for by moneys arising from the taxation of the people of the municipality.

Mr. ELKINS. Would not the Senator be willing to allow the use of gas, under his amendment, for domestic purposes—that is, for furnishing heat and light to the people?

Mr. TALIAFERRO. The object of the amendment is to get gas to the people for their domestic consumption at reasonable rates.

Mr. ELKINS. Will the Senator accept as an amendment the words "domestic and municipal purposes?"

Mr. TALIAFERRO. No, I can not, because it would leave the monopoly in the hands of the carriers of the gas; and I desire that the demands of the public shall be served by competitors who will deliver the goods at reasonable rates.

Mr. ELKINS. In connection with the selling of gas for domestic consumption, the words "domestic consumption" have a definite meaning—they mean for lighting and heating purposes, but not for manufacturing purposes. By using the term "for municipal purposes" it might be construed that it will apply only to cities and towns; that they could buy gas for their own use and for public use, but could not allow domestic consumers to have it for purposes of lighting and heating.

Now, Mr. President, on this point of gas for manufacturing purposes, it is a very close question in my State. We are a large gas-producing State. The people of West Virginia are apprehensive and much concerned because States adjoining are taking gas out of the State and using it for manufacturing purposes, for the reason that this helps build up manufactures in Pittsburg, Toledo, and Cleveland and discourages manufacturing interests in the State of West Virginia, where the gas is produced. The legislature has tried, but in vain, as it did in Indiana, to find some way to prevent the exhaustion of gas in West Virginia by pumping it out of the State into these adjoining States.

To the extent that this amendment might be a help to West Virginia, I would favor it, but I do not want to do anything that will build up the manufacturing interests of Pennsylvania and Ohio with gas taken from West Virginia, if I can help it.

Mr. KNOX. May I ask the Senator a question?

Mr. ELKINS. Certainly.

Mr. KNOX. Is it the desire of the Senator to cut off all commercial relations between West Virginia and the other States of the Union?

Mr. ELKINS. Not at all; and the Senator knows it is not. I am glad to have his State a purchaser of our commodities, all things being even; but I would rather use our gas to build up our manufactures than to allow his State to build up manufactures with West Virginia gas.

Mr. KNOX. I presume the great desideratum would be to move Pittsburg into West Virginia.

Mr. ELKINS. If we could it would be the greatest blessing that ever fell in the pathway of West Virginia. We can not very well extend the line of West Virginia to take in Pittsburg. If we can conserve the gas of West Virginia for the use of our own people, it will be helpful in building up plants and factories in our State, and in the interests of West Virginia this is what I desire.

Mr. BEVERIDGE. May I ask the Senator from West Virginia a question?

Mr. ELKINS. Certainly.

Mr. BEVERIDGE. Does the Senator see any reason why this law should apply to oil taken from West Virginia to Pittsburg and should not apply to gas taken from West Virginia to Pittsburg?

Mr. ELKINS. I do not see any. I suppose it ought to apply equally to both commodities, because they are of general use, and gas is quite as important and essential in manufacturing as oil. It is more so, perhaps, in the manufacturing of steel and iron products.

Mr. SCOTT. May I ask my colleague a question?

Mr. ELKINS. Certainly.

Mr. SCOTT. What would he do with the companies, now, that own their own pipe lines, their own oil drills, their own wells, and carry the gas to Pittsburg for manufacturing purposes? Does he propose to make them common carriers?

Mr. ELKINS. I do not believe you can legislate a fact. I do not believe you can legislate the Shoreham Hotel a common carrier. If pipe lines are owned by private individuals for their own use and for transporting their own gas and oil, they are not and can not be made common carriers.

Mr. SCOTT. My colleague has made a provision that where coal is owned by a railroad company and the railroad is owned

by the same party they must be separate. Now, would he separate the pipe lines from the manufacturer, from the man who owns the product?

Mr. ELKINS. If a man or corporation owns its own pipe line and did not condemn the right of way, but acquired it by purchase, and is transmitting gas through his or its own pipe line, built with his or its money, I do not believe Congress can make the man or corporation a common carrier.

While I do not wish to do injustice to any pipe line in West Virginia or elsewhere, yet I do not wish in any way to aid or facilitate the taking of gas from West Virginia to build up manufacturing interests in other States. I want to preserve and save the gas of West Virginia to build up factories in West Virginia. As I understand it, the pipe lines of West Virginia, both for transporting gas and oil, are owned by corporations that transport only their own products and not those of producers. The Standard Oil Company purchases the gas of all other producers and then transports it to the market through its pipe lines. The people of West Virginia receive every day in the year about $30,000 from the sale of oil. None of our oil producers transport their oil, as I understand it.

Mr. CLAY. Mr. President, I wish to say a word. I know we are anxious to get a vote, and I am going to say but a few words.

In my opinion, the argument made by the senior Senator from Texas [Mr. CULBERSON] has not yet been answered. The senior Senator from Texas stated the case in such a way that I am not able to get over it.

Now, what does the senior Senator from Texas say and what does this bill say? This bill makes every corporation engaged in the transmission of oil a common carrier. Every private corporation transmitting its own oil or transmitting its own gas is made a common carrier by the amendment of the Senator from Massachusetts [Mr. LODGE].

When you take the amendment offered by the Senator from West Virginia [Mr. ELKINS], which has been adopted, that amendment provides that no common carrier engaged in interstate commerce shall transport its own products. Now, taking the two together, what do they mean? Taking the two together, Mr. President, they mean that every corporation engaged in transporting oil or gas from one State to another, if acting for itself and not for the public, under a strict construction is closed down.

Mr. BEVERIDGE. Mr. President——

The PRESIDENT pro tempore. Does the Senator from Georgia yield to the Senator from Indiana?

Mr. CLAY. Certainly.

Mr. BEVERIDGE. That applies as well to oil as to gas, does it not?

Mr. CLAY. I concede that. I am not arguing against the amendment.

Mr. BEVERIDGE. Therefore, no matter what the point of the senior Senator from Texas may have been, this amendment, on the principle of equality, should go in. The argument of the Senator from Texas does not militate against the amendment of the Senator from Florida.

Mr. CLAY. I can understand well why a railroad, a common carrier engaged in the carrying of all classes of freight, ought not to be permitted to haul its own products in competition with another shipper. A corporation organized for the purpose of doing business exclusively for the public and not for the purpose of going into a private business should not be permitted to transport its own products in competition with the shipper. But now you have these pipe lines, constructed for the purpose of transporting gas and oil, placed under the provisions of this act. They were organized and constructed for the purpose of hauling gas and oil for the respective companies and not for the public.

I do not believe that the amendment of the Senator from West Virginia, which prevents the common carrier from hauling its own product, should apply to a private company engaged exclusively in hauling its own oil or gas.

Mr. LODGE. Mr. President——

Mr. CLAY. In one moment. After thousands and millions of dollars have been invested in private concerns, and the money invested at a time when no such law was in existence, you come along now and pass a law practically confiscating their property. Now I will yield to the Senator from Massachusetts.

Mr. LODGE. I understand the Senator's proposition to be that a carrier, a railroad, ought not to be a producer.

Mr. CLAY. Yes.

Mr. LODGE. And that a producer, as the Senator from Texas tersely put it, may properly be a carrier. What I want to suggest to the Senator is that this amendment makes the pipe lines and the oil companies subject to all the provisions of the bill. If the Senator thinks there is an injustice, the place to remedy it is on page 5, at that amendment, and not at this one. To change this one would take them out of the bill altogether.

Mr. CLAY. I agree with the Senator, and I was coming to that proposition.

Mr. LODGE. The exception comes in there.

Mr. CLAY. I was coming to that proposition. I was coming to the proposition that the provision inserted in the bill by the Senator from West Virginia providing that carriers engaged in interstate commerce shall not transport their own products in competition with shippers ought not to apply to pipe lines constructed for private use and not engaged in doing business for the public.

I believe a proviso of that kind ought to be adopted. I am perfectly willing to see it adopted to the amendment on page 5; but clearly to my mind we make them all common carriers. The private company, engaged in transporting its own oil or gas through pipe lines constructed at its own expense, should not be deprived of the privilege of transporting its own oil or gas. These lines are used for no other purpose, and if they can not be used for this purpose then they must be abandoned. The rule should be different for railroads, because they exercise the right of eminent domain and were chartered to do business for the public. The railroads should not be permitted to engage in mining and selling coal or any other commodity, because, in the distribution of cars, they will discriminate against independent shippers.

The PRESIDENT pro tempore. The question is on agreeing to the amendment proposed by the Senator from Florida [Mr. TALIAFERRO]. [Putting the question.] The noes seem to have it. The noes have it, and the amendment is rejected.

Mr. TALIAFERRO. I call for the yeas and nays.

The yeas and nays were not ordered.

The PRESIDENT pro tempore. The yeas and nays are refused, and the amendment is rejected. The question is on concurring in the amendment as amended.

Mr. BACON. I hope the amendment as amended may be read, so that we will know exactly what it is.

Mr. GALLINGER. It was amended yesterday.

Mr. BACON. I understood the Chair to state as amended, and for that reason I desired that it should be read.

The PRESIDENT pro tempore. It was amended by adding at the end of line 6, page 1, the words stricken out yesterday on the motion of the Senator from Illinois [Mr. HOPKINS].

Mr. LODGE. The question is on concurring to the amendment made in Committee of the Whole as amended.

Mr. GALLINGER. As amended.

The PRESIDENT pro tempore. It was amended by striking out the words moved yesterday by the Senator from Illinois [Mr. HOPKINS].

Mr. TELLER. We struck out what provision?

Mr. LODGE. We struck out the Panama provision.

The PRESIDENT pro tempore. The question is on concurring in the amendment made as in Committee of the Whole as amended.

The amendment as amended was concurred in.

The PRESIDENT pro tempore. The Secretary will state the next amendment made as in Committee of the Whole.

The SECRETARY. On page 3, after line 4, the Senate, as in Committee of the Whole, agreed to insert:

> The term "common carrier," as used in this act, shall include express companies and sleeping-car companies.

The amendment was concurred in.

The PRESIDENT pro tempore. Does the Senate desire to have read the next amendment made as in Committee of the Whole on page 4, after line 8; which was read four times yesterday?

Several SENATORS. Oh, no!

Mr. GALLINGER. I understood the Senator from Texas [Mr. CULBERSON] had a modification of that amendment which he proposes to offer, and he is not now in the Chamber.

Mr. SIMMONS. I am sure the Senator from Texas has a modification of that amendment which he desires to offer, and, as has just been stated, he is not now present.

Mr. GALLINGER. I am informed that the Senator from Texas has prepared a modification of that amendment, and I hope he has done so. I am sure we do not want to adopt the amendment as it now stands.

Mr. SIMMONS. The Senator from Texas desires to modify the amendment, I am sure.

Mr. GALLINGER. I ask that the amendment may be passed over.

Mr. BAILEY. Mr. President, in order that this amendment may be passed over until my colleague [Mr. CULBERSON] returns to the Chamber, I will occupy the floor upon a matter apart from this.

Yesterday I called the attention of the Senate to an attack upon me which had appeared in certain newspapers. That attack was based upon an allegation that ex-Senator Chandler had addressed to the President of the United States, or to some member of his official family, a communication impeaching my fidelity to the cause of railroad regulation. Immediately after I had concluded what I then said to the Senate I addressed to ex-Senator Chandler a letter, a copy of which I will ask the Secretary to read from the desk.

The PRESIDENT pro tempore. Without objection, the letter will be read.

The Secretary read as follows:

UNITED STATES SENATE,
Washington, D. C., May 16, 1906.

Hon. WILLIAM E. CHANDLER,
Washington, D. C.

MY DEAR SIR: Partisan Republican newspapers are charging that you have at some time written a communication to the President, or to some member of his Administration, impugning my good faith with reference to the pending railroad rate bill. I would thank you to send to me a copy of any communication which you have made to the President, or to any member of his Administration, and which could possibly have been made the basis of any such charge.

Very respectfully, yours, J. W. BAILEY.

Mr. BAILEY. I will now ask the Secretary to read the matter which I send to the desk.

The PRESIDENT pro tempore. Without objection, the Secretary will read as requested.

The Secretary read as follows:

The game of the railroad Senators is to support BAILEY'S amendment and induce him to agree to a broad right of review. What that is to be is not certain, but the prinicpal object is to "beat him"—meaning the President. Mr. TILLMAN, however, considers himself as acting with the President to pass the review clause with the minimum amount of court power and will not enter into any such game.

APRIL 11, 1906.

Mr. LOEB: Please hand this to the President privately. I am hearing an important case all day to-day, but could see him if he wished to see me at 1 o'clock.

WILLIAM E. CHANDLER.

Mr. BAILEY. Now, Mr. President, I ask the Secretary to read the letter of Mr. Chandler, which I send to the desk.

The PRESIDENT pro tempore. In the absence of objection, the Secretary will read as requested.

The Secretary read as follows:

SPANISH TREATY CLAIMS COMMISSION,
Washington, D. C., May 16, 1906.

Hon. J. W. BAILEY,
United States Senator.

DEAR SIR: I have your letter of to-day, and I inclose to you a copy of a memorandum sent by me to the White House on the morning of Wednesday, April 11. I think the memorandum was not dated, but my retained copy is dated April 11. I did not therein give the President any assurances as to your attitude relative to the so-called "game," because I had not seen you and did not feel authorized by anything Mr. TILLMAN had then said to give any assurance in your name. At 9.15 p. m. I saw Mr. TILLMAN and talked with him fully, and he then told me that neither he nor yourself were entering into games with the railroad Senators, and at 9.30 I saw the President and told him what Mr. TILLMAN had said and that he need have no apprehensions on the subject. I inclose to you copies from my diary. April 13 I saw Mr. Moody, and again on the 14th, and arranged with him to see Mr. TILLMAN and yourself on the next day, Sunday, the 15th.

Yours, truly,

WM. E. CHANDLER.

Mr. BAILEY. Now I ask the Secretary to read the extract which I send to the desk from the diary of Mr. Chandler.

The PRESIDENT pro tempore. Without objection, the paper will be read.

The Secretary read as follows:

[The diary.]

April 11, at 9.15 p. m., saw Senator TILLMAN at Colonial about railroad rate legislation. At 9.30, at White House, saw President Roosevelt alone upstairs. Talked of railroad rates and many other things for more than an hour. He was very gracious. At about 10.30 to Colonial with TILLMAN until 11.45.

Mr. BAILEY. Mr. President, I now wish to call the attention of the Senate for a moment to the genesis of this slander. In the New York Tribune of yesterday there appears this statement:

One of the disquieting rumors which found circulation on the Democratic side of the Chamber to-day was that Senator TILLMAN had written ex-Senator Chandler that he sorely mistrusted the sincerity of Senator BAILEY'S methods; that he suspected the Texan of treating with Mr. ALDRICH, but that he, TILLMAN, was keeping a close watch on his Texas friend and would not give him any opportunity to "sell out to the conspirators." It was even rumored that Mr. Chandler had left this note in the hands of the President, and that it might at any time be forthcoming, to the chagrin of the Senator from South Carolina and the discomfiture of the Senator from Texas.

When the Senator from South Carolina [Mr. TILLMAN] very promptly and very properly branded that, the New York Tribune of this morning modified its lie in some small particulars. It declares now that—

It is a further fact that a copy of the memorandum alleged to have been signed by Mr. Chandler—

Nothing about one signed by Senator TILLMAN now, but—

signed by Mr. Chandler, which is printed above, has been circulated among Democrats in the Senate, and it was on this copy that the Tribune correspondent's assertions were based. Democratic Senators who exhibited the memorandum maintain that the original, signed by Mr. Chandler, is in the possession of the President.

Mr. President, I have made diligent inquiry of Senators on this side to find, not if one of them had been circulating that statement—because not one of them would be base enough to circulate behind the back of an associate a paper intended to reflect upon his honor or his good faith. No matter what may be my relations, personal or political, I believe—indeed, I know—that every Senator on this side is an honorable man and would scorn to circulate in secret a document calculated to reflect upon one of his associates; but I have made inquiry and, so far as I have been able to learn, no Democratic Senator had ever seen a copy of this paper until to-day. I did not know until this morning that Senators on that side had seen it, but I say now that the President showed it to a Member of the House of Representatives in the presence of a Senator on that side yesterday. If it is desired, I can call the name of the Senator on that side in whose presence the President himself read it.

Now, Mr. President, if there had never been another word written or spoken by ex-Senator Chandler except this memorandum, there is not a syllable in it that justifies the statement that he impugns my good faith. He says:

The game of the railroad Senators is to support BAILEY'S amendment and induce him to agree to a broad right of review.

He does not say that I was playing that game; but I will say that the railroad Senators, as he calls them, played it very successfully with some other folks. They played it so successfully that they secured their broad review without having to accept an anti-injunction amendment.

More than that, Mr. President, the ex-Senator, in this statement, does not impeach the honesty of even those whom he calls "the railroad Senators." He does not say they were trying to serve the great corporate and special interests concerned. He says their "principal object is 'to beat him,'" meaning the President. That is an object with which I ought to have keenly sympathized; but I did not at that time. I repeat that this document imputes no unpatriotic purpose to even the men whom he describes as "railroad Senators;" and he says their "principal object" was to beat the President.

But, Mr. President, suppose that this document had charged that Senator BAILEY was playing the game with the railroad Senators and that Senator BAILEY intended to give them the right of a broad review even without his anti-injunction amendment, would it lie in the mouths of these people to assail me with a statement like that? Does not the Senate know, and does not the country know, that on last Saturday the President denounced one statement of ex-Senator Chandler as an unqualified and deliberate falsehood, and yet on Monday the President's friends were circulating a slander against me, based upon a grossly distorted statement made by him.

Suppose Senator Chandler had charged me with disloyalty to this cause, could men of decency and of honor have quoted him in support of that charge after they had denounced him as bearing false witness? I leave the country to pass judgment on the conduct of men who denounce a witness when he speaks contrary to their recollection and in forty-eight hours invoke the statement of that same witness to assail the good faith of an honorable gentleman.

Mr. President, I also leave it to the country to say whether the President of the United States treated that memorandum as an impeachment of my good faith. It was dated on the 11th day of April, and on the 14th day of April, only three days afterwards, I was urged to attend a conference arranged by the President of the United States with the Attorney-General of his Cabinet. Does it seem possible that a President, distrusting the good faith of any man, would invite that man to confer with his law officer respecting the very measure upon which his good faith was questioned? It passes my belief. To invite a Senator to a conference while distrusting him and conceal from him that distrust is an act of hypocrisy which can not be fitly described. The President did not consider that memorandum as any impeachment of my good faith; and the proof that he did not is that, with it before him, and through the very man who sent it to him, and within three days, he asked me to confer with his Attorney-General upon a vital legal question. It is inconceivable that a President, with the

proof before him or with what he regarded as proof before him, or even with a suspicion in his mind, would permit his Attorney-General to transmit to me the form of an amendment upon which his friends and our friends were expected to unite. I have no words to express my contempt of a man who treats with others whom he suspects of treachery. Only traitors do that.

The morning paper contains a statement from the correspondent whose story I denounced on yesterday. It does not seem to have disturbed him much, because he says that I denounced the President and practically overlooked him. I suppose he regards it as being overlooked to be denounced as an unqualified, deliberate, and malicious liar. In this statement he says:

In the very outset of the negotiations he was conducting Chandler prepared and left at the White House a written memorandum for the benefit of the President. I have not the text of that memorandum before me, but, quoting from memory, it says.

"Quoting from memory." He must have seen it. Where did he see it? Let the answer come from others. He did not see it in my hands, because I had not seen it until within the last two days. He did not get it from Chandler. Who else had it? It is addressed to Loeb, with a request that it be submitted to the President.

Again, he says:

I know I am correct in the statement that during the course of the negotiations William E. Chandler, who since has accused the President of falsehood, made an oral report either to the President himself or to some one representing him, which was much more specific.

How does he *know* it? Where did he learn it? From whom did he receive the information? Was it from the man to whom it is said Chandler communicated it? I leave the country and the Senate to say.

Mr. President, I know the fortunes of war. I know that whenever circumstances happen to place any man in the forefront of the battle he must bear its brunt; and I make no complaint that I was compelled to bear my part in this controversy. I know that war means killing, and I cheerfully accept the chances of it. If it be civilized warfare, no murmur shall ever escape my lips; but in this century of civilization and progress, when the gospel of a "square deal" is upon the tongues if not in the hearts of men, our political adversaries ought at least to fight with the common fairness of the prize fighter—they ought not to strike below the belt.

I have in my time made many mistakes. I have in my time been accused of many things. My enemies delight in describing me as rash, headstrong, intemperate in speech and action, and, unfortunately, they too often have good reason for that description. My friends complain that sometimes I am arbitrary and dictatorial; and many times I concede the justice of their criticism. I have made many mistakes of judgment. I have done some men wrong, but when I became convinced of it, thank God, I have always had the manliness to acknowledge it and to tender my apology. But amongst all the accusations that have been made against me, no man ever before imputed to me a lack of candor, or charged me with duplicity; and no man ever shall and escape my denunciation. When a man so accuses me, it matters not where I am or who he is, I will write the "liar" across his forehead, so that in after years all men may know him and all honest men may shun him.

The PRESIDENT pro tempore. The question is on the amendment known as "the pass amendment." Is the Senate ready for the question?

Mr. BEVERIDGE. The senior Senator from Texas [Mr. CULBERSON], I think, has not offered his substitute. It was, I think, agreed that that might be passed over, Mr. President.

The PRESIDENT pro tempore. The amendment will be passed over. The next amendment will be stated by the Secretary.

The SECRETARY. On page 5, beginning with line 25, the following paragraph was inserted as in Committee of the Whole:

From and after May 1, 1908, it shall be unlawful for any common carrier to transport from any State, Territory, or district of the United States to any other State, Territory, or district of the United States or to any foreign country any article or commodity manufactured, mined, or produced by it or under its authority or which it may own in whole or in part, or in which it may have any interest, direct or indirect, except such articles or commodities as may be necessary or used in the conduct of its business as a common carrier.

Mr. TILLMAN. Mr. President, I regard this as one of the most far-reaching and important amendments that it is proposed to incorporate in the bill now under consideration. The words in the bill that have just been read are a substitute for the original amendment proposed by the Senator from West Virginia [Mr. ELKINS]. I have not bothered myself, Mr. President, about coupling my name with any provision of this bill. There is not in it any so-called "Tillman amendment;" but I think that a brief recital of the facts would make it permissible for me to claim as much credit or discredit—whichever it may turn out to be—for the idea involved in this proposition as any other Senator.

While it is known as the "Elkins amendment"—although the language is not that of Mr. ELKINS, it having been prepared by the Senator from Mississippi [Mr. MCLAURIN] and the Senator from Texas [Mr. CULBERSON]—I recall the fact to the attention of Senators that on the 24th of February, the evening after the majority of the Interstate Commerce Committee had intrusted this bill to my keeping, to be reported without amendment, in an interview given out to the newspapers, I declared that it was not my purpose to be made a clown of in any effort to cast ridicule upon this proposed legislation; that if Senators who had charged me with this duty had any such purpose I would not lend myself to it, and that I would endeavor, in every way possible, to secure a practical and good railway rate law. I further stated that there were two important amendments which I wished to see incorporated in the bill. One of these was the idea embraced in this amendment, to wit, the divorce of the business of transportation from the business of production—to make a public carrier a public carrier and nothing else.

The other was a provision to compel interstate-commerce roads to give connections by means of switches or other appliances, so these little branch lines could gain access to the markets. That idea had been discussed and pressed with great earnestness by the Senator from West Virginia in committee, and I am perfectly willing that he should claim the paternity of it. But, so far as this other proposition is concerned, I think it never would have received the attention it has in the eyes of the people of the country and that the Senator from West Virginia himself never gave it the serious consideration which he afterwards did until I presented to this body the memorial of the Red Rock Fuel Company, pointing out the iniquities and outrages perpetrated on that corporation by the Baltimore and Ohio, and also followed, as it was, by the letter from the governor of West Virginia, Mr. Dawson, proclaiming the fact that the State of West Virginia was absolutely at the mercy of the three railroad systems entering it, so far as getting to market was concerned.

Then Senators will recall that day after day for a week or more every morning I presented in this Chamber and had read letter after letter from various coal producers, pointing out the absolute helplessness of the independent operators because of the fact that the Pennsylvania road and the Baltimore and Ohio road and the Chesapeake and Ohio road and the Norfolk and Western road absolutely dominated the bituminous and the anthracite coal fields of the two States of Pennsylvania and West Virginia, and that their property was being confiscated. So much for the genesis of this proposition.

But my attention has been called to the fact that the amendment that is incorporated in the bill as it stands, which it is proposed to concur in, does not cure the evil.

I have here a communication from a gentleman engaged in coal production, and he points out that this amendment would not prevent the ownership of coal properties by the ownership of stock in coal companies; that it would not prevent the control of coal companies by officials of railway companies; that it would not touch the ownership of railroads by coal companies or the common ownership of railroad companies and coal companies. Here is a letter prepared by an independent coal operator, in which the scheme by which this amendment can be evaded is elaborated and pointed out in detail. I have not time to read it, but I ask to have it incorporated in my remarks.

The PRESIDENT pro tempore. The Chair hears no objection.

The letter referred to is as follows:

WASHINGTON, D. C., *May 15, 1906.*

Hon. B. TILLMAN,
United States Senate.

MY DEAR SIR: So far as I have read the debates on the rate bill now before the Senate, you fail to touch one of the most important points in the railroad discrimination. As a rule the railroads do not own coal mines, but the principal owners and managers of railroads do. Let me illustrate in my crude way:

Suppose Cassatt, Murray & Co. own a big railroad. Suppose the same men—Cassatt, Murray & Co.—own large bodies of coal lands contiguous to this railroad; that the same Cassatt, Murray & Co. organize a coal company to mine coal and give it the name of the Susquehanna Coal Company. Suppose the Susquehanna Coal Company leases the land of Cassatt, Murray & Co. for the purpose of mining coal for market and pay a royalty, and that the railroad gives preference to this coal company in furnishing cars. You will readily see that a suit under the proposed Elkins substitute will not hold water. Nobody knows this better than the author of the substitute.

It seems to me that what is necessary is to frame an amendment requiring the railroads to prorate cars in proportion to the capacity of the operating coal companies. For instance, suppose A, B, and C are coal operators and competitors; that A's capacity is 100 tons of coal per day; that of B 50 tons, and C 25 tons. You will see that A needs twice as many cars as B, and that B needs twice as many cars

as C. Suppose, however, that the railroad company owned by Cassatt, Murray & Co. agrees to furnish cars in proportion to the capacity of the competing companies as above and that cars have been sent to the yards for C, the smallest producer; A learns this, and as he is covetous to the last degree and has more money than C, who has limited means, he (A) bribes some switchmen (as is constantly done) to run C's cars on to A's tracks, and he does so. The railroad company can claim that it has no such knowledge; that it ordered cars sent C as requested.

One of the things that should be done, so it seems to me, is to so frame an amendment compelling equitable prorating of cars and compel the car accountant of the railroads to keep a separate set of books for coal cars, which should at all times be open to the inspection of the public, showing the number of coal cars owned by the railroad or used by the railroad, where they are at any and all times, and to make the railroad responsible if some switchmen should make a mistake, intentionally or otherwise, and run C's cars onto A's tracks.

As a Republican who always votes the Republican ticket, let me suggest that you consult some expert railroad or coal man, when you will find that the above is the way the railroads operate coal lands; not the companies, but the owners of the railroads, own the lands and practice such subterfuges as I mention above.

Very respectfully, D. J. ROBERTS.

The penalty of a car accountant for making a false entry of coal cars should be imprisonment.

Mr. TILLMAN. Mr. President, there are differences of opinion among able lawyers whom I have consulted, and I have before remarked in the Senate that this question is so perplexing and has so many ramifications and there are so many complex conditions, so many methods of evasion, that it is difficult, without a long and well-guarded enactment, to accomplish what we are trying to do without overdoing it and perpetrating great injury and wrong in certain instances. I have prepared what appears to me to be a much stronger and more efficacious provision, which I send to the desk and ask to have read as a substitute for the pending amendment.

The SECRETARY. In lieu of the amendment agreed to as in Committee of the Whole it is proposed to insert the following:

After May 1, 1908, it shall be unlawful for any common carrier to engage in the transportation of interstate commerce, if such common carrier shall at the time be interested, directly or indirectly, by stock ownership or otherwise, in the article or property which is the subject-matter of such commerce, or if it be interested at the time, directly or indirectly, by stock ownership or otherwise, in the mines or factories producing such commerce; or if at the time any officer, director, agent, or employee of such common carrier be interested, directly or indirectly, by stock ownership or otherwise, in the business of buying or selling such article or property which is the subject-matter of such commerce, or in the mines or factories producing the same; or if at the time stockholders owning more than 10 per cent of the capital stock of such common carrier be interested, directly or indirectly, in the business of buying or selling such article or property which is the subject-matter of such commerce, or in the mines or factories producing the same.

This section shall not prevent a common carrier from mining coal or carrying articles or property for its own use or for the use of its officers, directors, agents, employees, or stockholders.

The PRESIDENT pro tempore. The question is on agreeing to the amendment offered by the Senator from South Carolina. [Putting the question.] By the sound the "noes" have it.

Mr. TILLMAN. I ask for the yeas and nays.

Mr. CLAY. Let me ask the Senator a question. Does he ask for the adoption of this amendment in lieu of the amendment already adopted?

Mr. TILLMAN. Yes, sir.

Mr. MCCREARY. I ask that the amendment of the Senator from South Carolina may again be read.

The PRESIDENT pro tempore. The amendment will again be read.

The Secretary again read the amendment.

The PRESIDENT pro tempore. The Senator from South Carolina demands the yeas and nays on the question of agreeing to the amendment.

Mr. TILLMAN. For the present I will withdraw that request. I desire to say a word in regard to the amendment. Having spoken on the original amendment, I now wish to mention some of the reasons why I want to substitute this.

It is easy to see that the provision which is now in the bill, while very broad, is also very loose; and while it is a step, and a very long one, in the right direction, and will undoubtedly do a great deal of good, the amendment which I have now offered may be too drastic. I had hoped, however, that we could incorporate this in the bill, knowing that in conference an important matter like this, so far-reaching in its consequences, would be very carefully considered, and every right and interest protected and guarded that it is possible to protect. But it is very clear to any man who thinks that if the officers of a railroad are permitted to own a mine, or if the railroad itself is permitted, through ownership or joint ownership or some other subterfuge or trickery, to have an interest in a coal mine, there will inevitably be favoritism in dealing with that coal mine and transporting its product, and that it will be impossible, without some drastic provision like this, to prevent the evils which every person recognizes.

Now, then, feeling that possibly this may be too strong, but expecting that it would be modified in conference if it be found to be dangerous, I offered it. It shows what I am trying to do. As I said, we have taken a long step forward. It may be wiser to wait a while and let the courts interpret the provision already in the bill. But, recognizing that the Senate will not vote this measure in, I withdraw the demand for the yeas and nays; I do not withdraw the amendment, but leave it as it is, already voted down. I want to ask the Senate to incorporate in this provision, in line 7, page 6, after the word "indirect," the words "by partnership, stock ownership, or by any arrangement whatsoever." Thus the broad provision in regard to the public carrier being prohibited from transporting anything which it produces, will be broadened and more particularized by the words I have used. I will repeat them. After the word "indirect," in line 7, on page 6, insert the words "by partnership, stock ownership, or any arrangement whatsoever."

The PRESIDENT pro tempore. The question is on agreeing to the amendment proposed by the Senator from South Carolina. [Putting the question.] By the sound, the "noes" have it.

Mr. TILLMAN. I will have to ask for the yeas and nays on that, because if the Senate is unwilling to put that in, it might just as well strike out the whole provision. I honestly believe you can not only run a freight train through this provision so far as the law goes, but there are holes in it through which you might drop the Washington Monument.

The PRESIDENT pro tempore. On this amendment the Senator from South Carolina demands the yeas and nays. Is there a second?

Mr. CULBERSON. May we have the amendment again stated?

The SECRETARY. On page 6, line 7, after the word "indirect," it is proposed to insert "by partnership, stock ownership, or any arrangement whatsoever;" so that, if amended, it will read:

Or produced by it or under its authority, or which it may own in whole or in part, or in which it may have any interest, direct or indirect, by partnership, stock ownership, or any arrangement whatsoever, except such articles or commodities as may be necessary or used in the conduct of its business as a common carrier.

The PRESIDENT pro tempore. Is there a second to the demand of the Senator from South Carolina for the yeas and nays?

Mr. TILLMAN. If the Senate could vote on it again, it might adopt the amendment. I ask for a division.

Mr. PILES. Mr. President, if it is in order, I should like to make a few remarks in reference to this amendment, as it would destroy practically every industry in the State of Washington if it should be adopted. I reserved the right to offer to this paragraph of the section when the bill reached the Senate an amendment providing that it shall not have application to timber or the manufactured products thereof. I might just as well present the amendment now, and my remarks with reference thereto, if it is proper. I move to amend the section, in line 4, page 6, after the word "commodity," by inserting "other than timber and the manufactured products thereof."

The PRESIDENT pro tempore. The Senator can not offer the amendment now.

Mr. PILES. I will discuss the question anyway.

Mr. TILLMAN. I will say to the Senator from Washington that, so far as I am personally concerned, I am perfectly willing and anxious to except any industry. I mentioned the other day that there were lumber roads that had been built by the owners of the trees, and unless they had been allowed to build their own railroads, the lumber would never have gotten to market. I am perfectly willing to except lumber and its products.

Mr. PILES. That is all right.

Mr. TILLMAN. I am after coal and coke, two of the necessaries of life.

Mr. PILES. A few words on the question of coal. I do not know what the conditions are in West Virginia that may call for drastic legislation of this character, but the State of Washington is one of the great coal-producing States of this Union. We are engaged in producing coal largely by small railroads. It is true that the great transcontinental railroads own coal mines in our State, and have owned them for a great many years, for the simple reason, I suppose, that private individuals did not see fit to engage in the coal-mining business to a very large extent in the early history of the State of Washington. The railroads acquired coal-mining properties and developed those properties to a very large extent. But, on the other hand, there are private persons and companies engaged in mining and transporting coal in the State of Washington.

Mr. President, I know, for instance, in my own home city, in the early history of that country the people turned out en

masse for the purpose of constructing, or aiding in the construction, of a little line of railroad—which is now some 38 miles in length—to the coal mines, in order that they might have some product to send to market and get ready money into that new country. That road exists to-day, and to my personal knowledge its stock is, or was, owned by another transportation company. It is run in connection with a steamship line, and it carries freight and passengers for hire for the people living along the line of the road. But the transportation of outside freight is a mere incident to its business. The principal business of that road is to carry the coal mined by its stockholders up in the mountains down to the city of Seattle, and there it is transported by steamers to California and other domestic ports, where it is sold. That steamship line is indirectly, at least, interested in that railroad. Is it the intention of Congress to put that railroad out of business? Is it the intention of Congress to put that steamship line out of business? I think not.

Mr. President, that is but one incident. Many more might be cited. That road is doing nobody any injury. It and the mines which it reaches employ hundreds of men in a great and beneficial industry. The steamship line operated in connection with it is engaged in building a great commerce. Shall this railway company, this steamship company, and other companies conducting great industries on similar lines be put out of business? That is exactly what will be done if the amendment of the Senator from South Carolina is adopted, because it provides, in effect, that the steamship line shall not own any stock in the railroad company, and the railroad company shall own no stock in the steamship line, and if such ownership shall exist it will be unlawful for the steamship company to transport from the State of Washington to the State of California, for instance, the coal carried by the railroad company to the city of Seattle for transshipment.

But let me go one step further, Mr. President. In the development of the great Pacific Northwestern country we have opened up the most magnificent forests in the world. We have done it by building great logging railroads into the forests. We are not logging in that country with horses and wagons or oxen. We are logging by means of railroads. Those railroads, running from 5 to 40 or 50 miles back into the forests, necessarily penetrate the valleys. People to a certain extent have settled in those valleys and have builded for themselves homes. Their little freight, as a matter of accommodation more than anything else, and some passengers, are carried by the logging railroads. Those logging roads own sawmills on tide water, or the mill companies own the logging roads. The roads take the timber to the sawmills, where it is sawed into lumber. The mill companies own their own schooners, both steam and sail. When the timber is sawed into lumber it is transported on these schooners to all parts of the maritime world.

If, then, these little logging roads can not own stock in the sawmills, or the mill companies can not own stock in the logging roads or own such roads outright, the great lumber industry, which employs in the woods 30,000 men alone, and which employs in the woods and in the mills and in the various industries connected with the manufacture of lumber in the State of Washington alone upward of a hundred thousand men, and has an annual pay roll of something like $60,000,000, will be seriously retarded if not wholly destroyed.

Mr. President, I think it is time for Congress to call a halt. We came here to enact legislation upon this great question which would be beneficial to the people. The people of this country have had one object in view, if I understand them aright, and that is to create some tribunal before which they can appear and submit their grievances. Every man in this country has a right to go into court and complain of any man who does him an injury, or with respect to whom he assumes that he has a grievance. The shippers of this country came to the conclusion that they were entitled to have some forum before which they could present their grievances with reference to the railway rates in this country. And finding they had none, except that afforded by the common law, which was worse than nothing, they wanted Congress to enact a rate law, and that was all they wanted in this bill, in my judgment. They did not want Congress to indict the great industries of this country. They did not want Congress to stifle the energies and the industry of man; and I protest in the name of the great Pacific Northwest against the injustice that is about to be inflicted upon those people, and I hope the Senate will not permit the amendment to prevail.

Mr. McLAURIN. Before the Senator from Washington takes his seat, I should like to ask him a question.

Mr. PILES. Certainly.

Mr. McLAURIN. If the words I shall read were inserted after the word "carrier," in line 1, page 6, would they not meet the objection of the Senator from Washington?

whose principal business is common carrying.

It seems to be the desire of the Senate to prohibit common carriers, whose principal business is common carrying, from engaging in the business of mining, but not to prohibit producers from providing their own means of transportation for their freight when they make the transportation business incidental to their main business. It seems to me if the words "whose principal business is common carrying" were inserted just after the word "carrier," in line 1, page 6, it would meet the objection of the Senator from Washington.

Mr. PILES. "Whose principal business is that of an interstate-commerce carrier." Is that what I understand the Senator to say?

Mr. McLAURIN. The words I would suggest are "whose principal business is common carrying."

Mr. PILES. I think that would greatly benefit the amendment as it now stands; it would make it a great deal better; but I want to insert the word "interstate"—"whose principal business is that of an interstate carrier." But I think that this amendment should be defeated altogether. It is too large a question to be dealt with in this way. In my judgment too much mischief may be done by the enactment of this proposed law at the present time.

Mr. ELKINS. Mr. President, the purpose of this amendment, which was adopted by such a large majority when the bill was under discussion in Committee of the Whole, is to make a start toward divorcing production and transportation. I think the amendment is drawn as mildly as it can be and accomplish anything.

The Senator from Washington [Mr. PILES] makes an appeal here that logging roads in his State shall be excepted, or that, on account of their being handicapped so much by this amendment, it should not go into the law. If I understand the Senator's position, and if these logging roads are owned by lumber companies and incidental to their business, the law would not apply to them; or, if I understand, if these are intrastate logging roads or private roads they do not come under the operation of the law, nor are they interstate carriers.

Mr. PILES. Will the Senator pardon me for a moment?

Mr. ELKINS. Certainly.

Mr. PILES. It is provided that this bill shall be applicable to carriers partly by rail and partly by water. I have endeavored to demonstrate that these logging roads are carrying partly by rail and partly by water, and it is not only interstate, but it is foreign commerce.

Mr. ELKINS. Which company owns—the steamship company, the lumber, or the railroad company?

Mr. PILES. One company owns the logging road and the sawmill and the steam schooners.

Mr. ELKINS. Which owns?

Mr. PILES. One company.

Mr. ELKINS. Which is the owning company?

Mr. PILES. I do not recall. In some cases it may be the lumber company, and in others it may be the railway company.

Mr. ELKINS. That is the very thing which produces the confusion here. If the lumber company owns this little line of railroad, 20 or 30 miles long, as an incident to its business, then this proposed law does not apply.

Mr. FLINT. I will answer by saying that one company organized under the laws of the State of California is engaged in the business of milling and also of operating a railroad and conducting a steamship line.

Mr. ELKINS. Those are very extraordinary powers to give to one company.

Mr. FLINT. Under the laws of our State——

Mr. ELKINS. Why do they not take in banking?

Mr. FLINT. They can do everything in my State but banking.

Mr. ELKINS. Here is a great——

Mr. PERKINS. I will state to the Senator, if he please, that in Alaska there are now projected a number of corporations which propose to develop the iron, the copper, the galena, and other mineral resources, and that same company will own the vessels which will transport the ores from Alaska to Tacoma.

Mr. ELKINS. Senators may get up and talk about these cases on the distant frontiers. What I wish to do is to correct the abuses which have grown up; to provide that railroads shall not engage in business in competition with shippers on their lines; that railroads shall not own thousands of acres of coal lands, and mine the coal and ship it over their own lines to market and freeze out and crush independent operators and individuals; that they shall not seize and become owners of whole sections of States, and monopolize the business of min-

ing and shipping coal, when they are organized and incorporated to only transport freight and passengers. If railroads can engage in the coal, coke, lumber, and iron-ore business, it will be only a question of time when they will drive out of business all other shippers of these commodities. The fact is the people do not want and will not permit railroads to engage in business in competition with their own shippers.

This is the main question. If incidentally during production and transportation it works injustice to small enterprises or to large ones, like those alluded to in California, Washington, and Oregon, the great principle contended for should not be prevented from becoming law because it might injure some smaller interest.

Mr. President, I insist that this amendment has due regard, so far as it can, to the rights and interests of all railroads and all producers. The question is, Will Congress permit the coal interests in the States of Pennsylvania, Ohio, West Virginia, and other States to be turned over to the railroad interests? Unless we provide some remedy of his kind, that will be the result.

I do not agree with the suggestions made by the Senator from California and the Senator from Oregon or the Senator from Mississippi. I think the Senate acted wisely when it passed this amendment, and I hope that it will remain a part of the law and be adopted by the Senate.

The PRESIDENT pro tempore. The yeas and nays have been demanded on the amendment proposed by the Senator from South Carolina [Mr. TILLMAN], and the Secretary will call the roll.

The yeas and nays were ordered.

Mr. FLINT. I understand that the amendment offered by the Senator from Washington is accepted by the Senator from South Carolina?

Mr. TILLMAN. I have no right to accept.

The PRESIDENT pro tempore. It is to an entirely different part of the section from that to which the amendment of the Senator from South Carolina is offered.

Mr. TILLMAN. I ask that my amendment may be read.

The PRESIDENT pro tempore. The amendment will be read.

The SECRETARY. On page 6 of the bill, line 7, after the word "indirect," insert "by partnership, stock ownership, or by any arrangement whatsoever."

The PRESIDENT pro tempore. The Secretary will call the roll on agreeing to the amendment proposed by the Senator from South Carolina.

The Secretary proceeded to call the roll.

Mr. MALLORY (when his name was called). I have a general pair with the Senator from Vermont [Mr. PROCTOR]. I do not know how he would vote on this question, and therefore I withhold my vote.

Mr. McLAURIN (when Mr. MONEY's name was called). My colleague [Mr. MONEY] has a general pair with the Senator from Wyoming [Mr. WARREN]. I will let this announcement answer for the day.

Mr. MORGAN (when his name was called). I am paired with the Senator from Iowa [Mr. ALLISON].

Mr. SMOOT (when Mr. SUTHERLAND's name was called). My colleague [Mr. SUTHERLAND] is unavoidably absent from the Senate to-day. If he were here, he would vote "nay."

The roll call having been concluded, the result was announced—yeas 23, nays 42, as follows:

YEAS—23.

Berry	Culberson	Hansbrough	Rayner
Burkett	Dolliver	La Follette	Simmons
Carmack	Foster	Latimer	Stone
Clark, Mont.	Frazier	McLaurin	Taliaferro
Clarke, Ark.	Gamble	Newlands	Tillman
Clay	Gearin	Overman	

NAYS—42.

Alger	Daniel	Kean	Pettus
Allee	Dick	Kittredge	Piles
Ankeny	Dillingham	Knox	Platt
Blackburn	Dryden	Lodge	Scott
Brandegee	Elkins	Long	Smoot
Bulkeley	Flint	McCumber	Spooner
Burnham	Foraker	Millard	Teller
Carter	Frye	Nelson	Warner
Clapp	Fulton	Nixon	Wetmore
Clark, Wyo.	Gallinger	Penrose	
Crane	Hopkins	Perkins	

NOT VOTING—24.

Aldrich	Burton	Hemenway	Money
Allison	Cullom	Heyburn	Morgan
Bacon	Depew	McCreary	Patterson
Bailey	Dubois	McEnery	Proctor
Beveridge	Gorman	Mallory	Sutherland
Burrows	Hale	Martin	Warren

So Mr. TILLMAN's amendment was rejected.

The PRESIDENT pro tempore. The Chair calls the attention of the Senator from Texas [Mr. CULBERSON] to the pass amendment, which was laid over in his absence. It is now before the Senate.

Mr. CULBERSON. Mr. President, it is not my desire to provoke any additional discussion on this subject——

Mr. STONE. The amendment offered by the Senator from South Carolina to the amendment was just voted on, and——

The PRESIDENT pro tempore. That has been disposed of.

Mr. STONE. But the amendment itself has not been agreed to.

The PRESIDENT pro tempore. It has not been concurred in. That question will be taken up after this amendment is disposed of.

Mr. CULBERSON. I was proceeding to say that I have no desire to provoke additional discussion on the subject of a free pass, and I do not believe the Senate would be glad to have it done. I have, however, redrafted the amendment as passed by the Senate, including every subject which was acted on by the Senate, but I think it is in better form, avoiding repetitions, etc. If I may submit it in this form now, I ask leave to do so.

The PRESIDENT pro tempore. The Senator from Texas offers an amendment, which will be read.

The SECRETARY. In lieu of the matter inserted as in Committee of the Whole, beginning on line 9, page 4, insert:

No carrier subject to the provisions of this act shall hereafter directly or indirectly issue or give any interstate free ticket, free pass, or free transportation for passengers except to its officers, agents, employees, surgeons, physicians, actual and bona fide attorneys, and members of their immediate families; to ministers of religion, inmates of hospitals and charitable and eleemosynary institutions; to indigent, destitute, and homeless persons, and to such persons when transported by charitable societies or hospitals, and the necessary agents employed in such transportation; to inmates of the National Homes or State Homes for Disabled Volunteer Soldiers, and of Soldiers' and Sailors' Homes, including those about to enter and those returning home after discharge under arrangements with boards of managers, and female nurses that served during the civil war; to ex-Union soldiers and sailors and ex-Confederate soldiers; and to owners and care takers of live stock when traveling with such stock or when going to point of shipment or returning from point of delivery: *Provided*, That this provision shall not be construed to prohibit the interchange of passes for the officers, agents, and employees of carriers, and members of their immediate families, nor to prohibit any carrier from carrying passengers free with the object of providing relief in cases of general epidemic, pestilence, or other calamitous visitations, nor prevent such carrier from giving free or reduced transportation to laborers transported to any place for the purpose of supplying any demand for labor at such place. Any carrier violating this provision shall be deemed guilty of a misdemeanor and shall for each offense pay to the United States a penalty of not less than one hundred nor more than two thousand dollars. Jurisdiction of offenses under this provision shall be the same as that provided for offenses in an act entitled "An act to further regulate commerce with foreign nations and among the States," approved February 19, 1903, and any amendment thereof.

The PRESIDENT pro tempore. The question is on agreeing to the amendment.

Mr. HANSBROUGH. Is the amendment open to an amendment?

The PRESIDENT pro tempore. It is not. The question is on agreeing to the amendment to the amendment.

The amendment to the amendment was agreed to.

The PRESIDENT pro tempore. The amendment is now open to amendment.

Mr. HANSBROUGH. I offer an amendment to come in after the word "dollars," line 4, page 5.

The PRESIDENT pro tempore. The Senator from North Dakota offers an amendment to the amendment just agreed to.

Mr. HANSBROUGH. It comes in immediately after the penalty clause in the amendment agreed to. It extends it to the person accepting the pass. That is the purport of my amendment.

The PRESIDENT pro tempore. The amendment will be read.

The SECRETARY. After the words "two thousand dollars," at the end of the penalty clause, insert:

And any person, other than the persons excepted in this provision, who uses, or who solicits or accepts for himself or other person, any such interstate free ticket, free pass, or free transportation shall be subject to a like penalty and fine.

The PRESIDENT pro tempore. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. DOLLIVER. I desire to offer an amendment. After the words "ministers of religion," where it occurs, I move to amend by adding "local and traveling railroad secretaries of the Young Men's Christian Association."

Mr. HALE. I move, in addition to the words to be inserted on the motion of the Senator from Iowa, to insert "all football and baseball players."

Mr. DOLLIVER. Mr. President——

Mr. HALE. I do not seek to antagonize the amendment of the Senator from Iowa. I shall vote for that, because I think it ought to be in, and in addition to that I want these other deserving and popular persons to have the benefit of passes.

Mr. DOLLIVER. Mr. President, there may be hidden in the suggestion of the Senator from Maine a very fine form of humor, although I do not think it lies upon the surface of it. There are in the United States 300 Railway Young Men's Christian Associations. The secretaries of those associations are giving their time practically without reward to help to serve the great body of railway employees of the United States.

Mr. DANIEL. Will the Senator allow me to ask him a question?

Mr. DOLLIVER. Certainly.

Mr. DANIEL. I have understood that those secretaries are employees of the railroad companies. The members of the association are, and they are, too, as I have been informed, so that they are already embraced in the term "agents and employees."

Mr. DOLLIVER. The members of the associations are employees of the railroad. The traveling secretaries are not employees of the railway, but give their entire time to serving their fellow-employees in matters of very great importance, not only as to their physical, but to their intellectual and moral life. I regard the provision as more important and more practical even than the exception made in favor of clergymen, who are traveling oftentimes not upon the business of their parish.

The PRESIDENT pro tempore. The question is on agreeing to the amendment offered by the Senator from Iowa [Mr. DOLLIVER].

The amendment to the amendment was agreed to.

Mr. HALE. Now, Mr. President, I move my amendment.

The PRESIDENT pro tempore. The Senator from Maine offers an amendment, which will be stated.

The SECRETARY. Insert after the amendment just agreed to the words "football and baseball players."

The amendment to the amendment was rejected.

Mr. McLAURIN. I move to insert after the amendment offered by the Senator from Iowa what I send to the desk.

The PRESIDENT pro tempore. The amendment will be stated.

The SECRETARY. Following the amendment agreed to on motion of the Senator from Iowa [Mr. DOLLIVER], it is proposed to insert:

Widows and orphans.

The PRESIDENT pro tempore. The question is on agreeing to the amendment proposed by the Senator from Mississippi.

Mr. McLAURIN. I will have to ask for the yeas and nays on that.

The yeas and nays were not ordered.

The amendment to the amendment was rejected.

Mr. GALLINGER. After the words "civil war," almost in the middle of the amendment, I move to add "or war with Spain." There is no reason why that should not be included. This is in good faith.

The PRESIDENT pro tempore. The amendment offered by the Senator from New Hampshire will be stated.

The SECRETARY. After the words "civil war" insert the words:

Or war with Spain.

The amendment was rejected.

The PRESIDENT pro tempore. The question is on agreeing to the amendment as amended.

Mr. BEVERIDGE. In view of the fact that the amendment is again being loaded down with cumbersome provisions which were added yesterday, and which the Senator from Texas today tried to change and reduce, I offer an amendment which I move as a substitute, and which contains the simple limitations which were first had without all these conditions. I offer it as a substitute for the entire amendment.

The PRESIDENT pro tempore. The Senator from Indiana offers an amendment, which will be stated.

The SECRETARY. In lieu of the amendment intended to be proposed insert the following:

That no carrier engaged in interstate commerce shall hereafter, directly or indirectly, or by any device, give free transportation, except to the officers, agents, and employees, attorneys, physicians, and surgeons of the carrier issuing the same, and members of their immediate families, to ministers of religion and inmates of hospitals and eleemosynary and charitable institutions and indigent sick persons.

Provided, That said carrier of interstate commerce may, by arrangement with other carriers of interstate commerce, provide for free transportation of its bona fide employees, officers, agents, attorneys, physicians, and surgeons, and their families, over the lines of such other carriers in connection with said free transportation over the lines of the carrier providing said free transportation.

Provided further, That nothing herein contained shall prevent such carrier from giving free or reduced transportation to laborers transported to any place for the purpose of supplying any demand for labor at such place.

Any carrier violating this provision shall be deemed guilty of a misdemeanor, and shall for each offense pay to the United States a penalty of not less than one hundred nor more than two thousand dollars.

The PRESIDENT pro tempore. The question is on agreeing to the amendment proposed by the Senator from Indiana [Mr. BEVERIDGE].

The amendment was rejected.

The PRESIDENT pro tempore. The question is on concurring in the amendment as amended.

The amendment as amended was concurred in.

The PRESIDENT pro tempore. The next amendment made as in Committee of the Whole is at the bottom of page 5, which the Secretary will read.

The Secretary read as follows:

From and after May 1, 1908, it shall be unlawful for any common carrier to transport from any State, Territory, or district of the United States to any other State, Territory, or district of the United States or to any foreign country any article or commodity manufactured, mined, or produced by it or under its authority or which it may own in whole or in part, or in which it may have any interest, direct or indirect, except such articles or commodities as may be necessary or used in the conduct of its business as a common carrier.

Mr. PILES. Mr. President, I move that the amendment be amended by inserting after the word "commodity," in line 4, on page 6, the words "other than timber and the manufactured products thereof."

The PRESIDENT pro tempore. The amendment proposed by the Senator from Washington will be stated.

The SECRETARY. On page 6, in line 4, after the word "commodity," it is proposed to insert "other than timber and the manufactured products thereof."

The PRESIDENT pro tempore. The question is on the amendment proposed by the Senator from Washington to the amendment made as in Committee of the Whole. [Putting the question.] The ayes have it; and the amendment to the amendment is agreed to.

Mr. PILES. I move to further amend the amendment by inserting, on page 6, line 1, after the word "carrier," the words "whose principal business is that of a common carrier."

The PRESIDENT pro tempore. The question is on the amendment proposed by the Senator from Washington to the amendment made as in Committee of the Whole. [Putting the question.]

Mr. GALLINGER. Let us understand that, Mr. President.

Mr. LODGE. Mr. President——

The PRESIDENT pro tempore. By the sound the "noes" have it.

Mr. LODGE. Mr. President, I object to having amendments run through in that way.

Mr. GALLINGER. So do I.

Mr. LODGE. This is a very important amendment; and I think we have some reason to discuss it. I do not even know where it is proposed to insert it in the bill, owing to the way it has been hurried through.

Mr. ELKINS. The amendment was proposed to be inserted on page 6, line 1.

Mr. LODGE. I do not think that even the amendment offered by the Senator from Washington [Mr. PILES] in regard to timber was carried.

The PRESIDENT pro tempore. That amendment was declared to be carried.

Mr. LODGE. I should like to have it pointed out where the last amendment is to come in.

The PRESIDENT pro tempore. The amendment will be again stated.

The SECRETARY. On page 6, line 1, after the words "common carrier," it is proposed to insert "whose principal business is that of a common carrier;" so that as proposed to be amended the amendment will read:

From and after May 1, 1908, it shall be unlawful for any common carrier whose principal business is that of a common carrier to transport from any State, Territory, or district of the United States., etc.

Mr. ELKINS. Mr. President, I understand that amendment was rejected.

The PRESIDENT pro tempore. It was declared to be rejected by the Chair——

Mr. ELKINS. Yes; it was declared to be rejected by the Chair.

The PRESIDENT pro tempore. By the action of the majority of the Senate.

Mr. CLAY. I am sure the Senator from West Virginia will accept the amendment which I now offer, as the words I propose were in the amendment as it was originally drawn. In line 8, on page 6, after the word "necessary," I move to strike out the words "or used in" and insert "and intended for its own use."

Mr. ELKINS. I accept the amendment.

The PRESIDENT pro tempore. The Senator from West Virginia can not accept the amendment. The amendment must

be acted on by the Senate. The amendment to the amendment will be stated.

The SECRETARY. On page 6, line 8, it is proposed to strike out the words "or used in" and to insert "and intended for its own use."

The PRESIDENT pro tempore. The question is on the amendment to the amendment.

The amendment to the amendment was agreed to.

Mr. STONE. Mr. President, I desire to call the attention of the Senator from West Virginia [Mr. ELKINS] particularly to the question which seems to be raised by the section as it now stands. It might work serious injury to those who are owners of pipe lines. I know very little about pipe lines, but that is evidently growing to a large business. The first section of the bill as it has been agreed to provides that:

Any corporation or any person or persons engaged in the transportation of oil or other commodity, * * * shall be considered and held to be common carriers within the meaning and purpose of this act.

The provision at this time before the Senate forbids any common carrier transporting any commodity of its own manufacture or production, unless it be carried for its own use in the conduct of its own business. The Senator from South Carolina [Mr. TILLMAN] says that will include coal. To be sure, it will include coal; and that may be very well. I have voted for the provision to exclude railroad companies from engaging in the mining of coal; but where a company is engaged in the production of oil, is it desirable to forbid that company to transport its oil, even though it be not for the purpose of using it in the business of transportation, but to forbid it transporting its oil to its reservoirs for sale or for refinement or for whatever it may be?

Mr. ELKINS. Will the Senator allow me to ask him a question?

Mr. STONE. Yes; but I have asked the Senator a question.

Mr. ELKINS. Has the Senator an amendment prepared to offer there?

Mr. STONE. I had prepared an amendment as a tentative proposition; but I am not sure whether or not it ought to go in. My amendment is to add, at the end of this provision, after the word "carrier," in line 9, on page 6, this proviso:

Provided, That this provision shall not apply to any corporation, person, or persons engaged in the transportation of oil or other commodity by means of pipe lines only.

Mr. LODGE. Mr. President, if I understand the amendment, it is to except the oil pipe lines from the operation of this amendment, and that is all.

Mr. STONE. Yes, sir; that is all. That is the purpose of it—that is to say, to except them from the operation of the pending amendment, which would forbid them from transporting through their own pipes their own production.

Mr. LODGE. I do not believe in excepting them, but I do not want to take the time of the Senate in discussing the matter.

The PRESIDENT pro tempore. Does the Senator from Missouri offer that amendment?

Mr. STONE. Yes, sir; I do offer it.

The PRESIDENT pro tempore. The amendment to the amendment will be stated.

The SECRETARY. On page 6, line 9, after the word "carrier," it is proposed to insert:

Provided, That this provision shall not apply to any corporation, person, or persons engaged in the transportation of oil or other commodity by means of pipe lines only.

Mr. MALLORY. Mr. President, I should like to inquire of the Senator from Missouri if, in his judgment, it is in the power of Congress to prohibit a pipe-line company, conducting a business of its own, from transporting its product if it does not transport it for hire, but simply transports its own product? Can a declaration made by Congress that such parties shall be common carriers make them common carriers when, in fact, they are not?

Mr. STONE. I have not believed, Mr. President, that the pipe lines constructed by a company or an individual, for use solely in his or its own business, or for the transmission of his or its own product and used for that only, would be subject to the provisions of this proposed law. But the first section of this bill does provide that all pipe-line companies engaged in carrying oil or other commodities from one State or district to another shall be considered common carriers.

Mr. MALLORY. What I wanted to inquire of the Senator was, would a declaration by Congress to that effect make them common carriers if, in fact, they were not common carriers; if they were simply carrying their own products at their own expense, and were not engaged in transporting oil for hire?

Mr. STONE. But suppose they are common carriers?

Mr. MALLORY. That would alter the case.

Mr. STONE. Suppose they are common carriers—that is to say, they construct a line of pipes and may carry for hire under the provisions of this law—they having exercised the right of eminent domain, become common carriers; is it the purpose of the law to forbid them transporting their own products through their own pipes?

Mr. BACON. I want to call the attention of the Senator to the fact that I think he misreads this sentence and altogether misconstrues it. I do not understand the first part of the first section to declare that all corporations so engaged are common carriers. The words are words of limitation, not of a declaratory character at all. The reading of it is this:

That the provisions of this act shall apply to any corporation or any person or persons—

Leaving out now the intervening words—

who shall be considered and held to be common carriers.

What corporation and what person? Such corporations and such persons as shall be decided to be common carriers. It does not say that all persons and all corporations so engaged shall be common carriers; but it says they shall be deemed to be within the provisions of this act if they are held to be common carriers—such of them as are held to be common carriers. I repeat, the words are words of limitation, and not words of declaration.

Mr. STONE. Mr. President, I care nothing whatever about the amendment; and as there seems to be a disposition to disagree to it, I will withdraw it.

The PRESIDENT pro tempore. The amendment of the Senator from Missouri [Mr. STONE] to the amendment is withdrawn; and the question is on concurring in the amendment made as in Committee of the Whole as amended.

Mr. DICK. Mr. President, I desire to offer an amendment. I move to amend, on line 25, page 5, by striking out the word "eight" and inserting "ten," so as to make the date there "May 1, 1910."

The PRESIDENT pro tempore. The amendment proposed by the Senator from Ohio to the amendment made as in Committee of the Whole will be stated.

The SECRETARY. On page 5, line 25, it is proposed to change the date from "1908" to "1910;" so as to read:

From and after May 1, 1910, it shall be unlawful for any common carrier, etc.

The PRESIDENT pro tempore. The question is on the amendment to the amendment.

Mr. TILLMAN. That has been voted down once by a yea-and-nay vote.

The amendment to the amendment was rejected.

The PRESIDENT pro tempore. The question is on concurring in the amendment as amended.

Mr. GALLINGER. I move to strike out the word "eight" and insert "nine." It will be remembered that on a vote of the Senate "1911" was once placed in the bill, and again "1909."

The PRESIDENT pro tempore. The amendment to the amendment will be stated.

The SECRETARY. On page 5, line 25, it is proposed to change the date "1908" to "1909."

The PRESIDENT pro tempore. The question is on the amendment to the amendment made as in Committee of the Whole. [Putting the question.] By the sound the "noes" have it.

Mr. GALLINGER. I ask for the yeas and nays on that.

The yeas and nays were not ordered.

The amendment to the amendment made as in Committee of the Whole was rejected.

Mr. PILES. I now move to amend, on page 6, line 9, after the word "carrier," by inserting the following:

Provided, That the Interstate Commerce Commission may by order except from the provisions of this section any carrier whose principal business, in the opinion of the Commission, may not be that of a common carrier.

The PRESIDENT pro tempore. The question is on the amendment of the Senator from Washington [Mr. PILES] to the amendment made as in Committee of the Whole, which will be stated.

The SECRETARY. On page 6, line 9, after the word "carrier," it is proposed to insert:

Provided, That the Interstate Commerce Commission may by order except from the provisions of this section any carrier whose principal business, in the opinion of the Commission, may not be that of a common carrier.

Mr. McCUMBER. Mr. President, I want to ask the Senator how the Commission is to determine what is the principal business? Is it to be determined by the quantity of business? Is it to be determined by the net profits of any particular character of business? What basis would the Senator lay down for the purpose of determining whether one business is the princi-

pal and the other merely collateral to it? Sometimes they may be even. One may be greater one year and another may be greater the next year; and so it may be in any particular month. It seems to me that the Senator is trying to get something in there that would be so vague that it would destroy itself.

Mr. PILES. Mr. President, I admit that there may be cases where it would be difficult for the Commission to determine with accuracy the principal business of the company; but a great injustice is going to be done to some of the great industries of this country if this provision of the bill carries as it now stands. Take, for instance, the company I mentioned a while ago, which will give a perfect answer to the Senator's question.

Mr. McCUMBER. May I make a suggestion to the Senator right there?

Mr. PILES. Certainly.

Mr. McCUMBER. I listened to the argument of the Senator and I confess that it did not appeal to me, because in the case which he gave if the railway is owned by anyone, it is owned by the stockholders, while if the stockholders own the railroad, the stockholders also own the lumber or the timber in just the same proportion that they own the railroad, and it would be the simplest thing in the world——

Mr. PILES. Suppose the carrier owns the stock.

Mr. McCUMBER. It would be the simplest thing in the world if it were among ten persons, each holding a tenth, that each of those ten persons would own one-tenth of the lumber industry, and form another corporation. Therefore, it is really unnecessary to make any exception to this rule.

Mr. PILES. Will the Senator allow me to ask him a question?

Mr. McCUMBER. Certainly.

Mr. PILES. Suppose the stock of one company be controlled by another carrier?

Mr. McCUMBER. Then this does not touch it if it is owned by another carrier.

Mr. PILES. But the amendment of the Senator from South Carolina, to which I was addressing myself a few moments ago, does.

Mr. LODGE. Mr. President, as the Senator from North Dakota [Mr. McCUMBER] has pointed out, it would be impossible to find a basis for such decisions as this. I think there is also another very fundamental objection. I do not think we ought to put it in the power of the Interstate Commerce Commission to exempt one company from the law if it chooses to say that its principal business is not in its opinion that of a common carrier.

The PRESIDENT pro tempore. The question is on the amendment to the amendment.

The amendment to the amendment was rejected.

The PRESIDENT pro tempore. The question recurs on the amendment made as in Committee of the Whole as amended.

The amendment as amended was concurred in.

The PRESIDENT pro tempore. The Secretary will state the next amendment made as in Committee of the Whole.

The SECRETARY. Beginning in line 10, page 6, the Senate, as in Committee of the Whole, adopted the following amendment:

Any common carrier subject to the provisions of this act shall promptly, upon application of any shipper tendering interstate traffic for transportation, construct, maintain, and operate upon reasonable terms a switch connection with any private side track which may be constructed to connect with its railroad, where such connection is reasonably practicable and can be put in with safety and will furnish sufficient business to justify the construction and maintenance of the same; and shall furnish cars for the movement of such traffic to the best of its ability without discrimination in favor of or against any such shipper.

The PRESIDENT pro tempore. The question is on concurring in the amendment.

Mr. LA FOLLETTE. I offer an amendment to that amendment.

The PRESIDENT pro tempore. The amendment to the amendment will be stated.

The SECRETARY. In section 1, page 6, after line 20, in the amendment already read, it is proposed to add the following:

If any common carrier shall fail to install and operate any such switch or connection as aforesaid, on application therefor in writing by any shipper, such shipper may make complaint to the Commission, as provided in section 13 of this act, and the Commission shall hear and investigate the same and shall determine as to the safety and practicability thereof and justification and reasonable compensation therefor, and the Commission may make an order, as provided in section 15 of this act, directing the common carrier to comply with the provisions of this section in accordance with such order, and such order shall be enforced as hereinafter provided for the enforcement of all other orders by the Commission other than orders for the payment of money.

Mr. LA FOLLETTE. Mr. President, the amendment to which I propose the amendment read by the Secretary is, I think, an important one, and if it is important, it certainly is worth while to add to it an enforcing provision. Such a provision is absent from the amendment under consideration. All that my amendment proposes to do is to provide for the enforcement of the amendment heretofore adopted by the Senate.

The PRESIDENT pro tempore. The question is on the amendment of the Senator from Wisconsin to the amendment.

The amendment to the amendment was agreed to.

Mr. LODGE. May I have that amendment stated again?

The PRESIDENT pro tempore. The amendment will be again stated.

The Secretary again read Mr. LA FOLLETTE's amendment to the amendment.

Mr. LODGE. The amendment of the Senator from Wisconsin is in the nature of a penalty clause to be attached to this particular paragraph of the bill. We have a general penalty clause that covers every infraction of the provisions of the bill, and it seems to me it is needless to add a penalty clause to each section.

Mr. ELKINS. Mr. President, I think this amendment ought to be adopted. I thought of providing a penalty clause and thought also of the suggestion of the Senator from Massachusetts, but I can see no objection to the amendment offered by the Senator from Wisconsin.

Mr. GALLINGER. There is no necessity for it.

Mr. LA FOLLETTE. May I interrupt?

The PRESIDENT pro tempore. The Chair will regard the question as an open question.

Mr. LA FOLLETTE. The amendment which I have offered is not a penalty provision at all. It is simply an enforcing provision, without which the paragraph is defective. I know the view that is entertained by the Commission with respect to that paragraph—that it would be inoperative unless such a provision be added to it.

Mr. NELSON. I think the Senator from Wisconsin [Mr. LA FOLLETTE] is right. His amendment is needed in order to give force and effect to what may be called "the switch amendment" of the Senator from West Virginia [Mr. ELKINS]. The amendment of the Senator from Wisconsin gives the Interstate Commerce Commission power directly to act in the premises, and I think the amendment of the Senator from West Virginia is incomplete without the amendment of the Senator from Wisconsin. I think the amendment to the amendment ought to be adopted.

The PRESIDENT pro tempore. The question is on the amendment of the Senator from Wisconsin to the amendment.

The amendment to the amendment was agreed to.

The amendment made as in Committee of the Whole as amended was concurred in.

The next amendment made as in Committee of the Whole was, on page 6, after line 20, to insert:

It shall be the duty of carriers engaged in interstate commerce to give equally good service and accommodations to all persons paying the same compensation for interstate transportation of passengers.

The amendment was concurred in.

Mr. LA FOLLETTE. Before leaving section 1, I desire to offer an amendment to the pass amendment, or the substitute of the Senator from Texas [Mr. CULBERSON] as finally adopted.

After the word "families," in line 5 of the substitute amendment which was finally adopted, I move to add the words which I send to the desk.

The PRESIDENT pro tempore. That amendment has been agreed to in the Senate and is not open to amendment.

Mr. LA FOLLETTE. But it is a part of this section, Mr. President.

Mr. LODGE. That does not make any difference.

Mr. LA FOLLETTE. I supposed until we passed the section it would be open to amendment.

The PRESIDENT pro tempore. The Chair would hold otherwise.

Mr. LA FOLLETTE. Then I do not offer my amendment.

The PRESIDENT pro tempore. The next amendment made as in Committee of the Whole will be stated.

The next amendment made as in Committee of the Whole was, on page 7, line 4, after the word "shall," to insert "file with the Commission created by this act and."

The amendment was concurred in.

The next amendment made as in Committee of the Whole was, on page 7, line 6, after the word "showing," to insert "all."

The amendment was concurred in.

The next amendment made as in Committee of the Whole was, on page 7, line 7, before the word "transportation," to strike out "the."

The amendment was concurred in.

The next amendment made as in Committee of the Whole was, on page 7, line 7, after the word "transportation," to strike out down to and including the word "route," in line 9, and to insert:

Between different points on its own route and between points on its own route and points on the route of any other carrier by railroad or by water when a through route and joint rate have been established.

Mr. LODGE. In order to make that amendment conform to the rest of the bill, I move to insert after the word "railroad," in line 11, the words "by pipe line."

The PRESIDENT pro tempore. The amendment to the amendment will be stated.

The SECRETARY. On page 7, line 11, after the word "railroad," it is proposed to amend the amendment by inserting the words "by pipe line."

The PRESIDENT pro tempore. The question is on the amendment of the Senator from Massachusetts to the amendment.

Mr. FORAKER. What is that amendment?

Mr. LODGE. I will say to the Senator from Ohio it is simply to make applicable to pipe lines on joint routes the same requirement for schedules of rates, etc., to be kept open to inspection, that is made in regard to other carriers.

Mr. FORAKER. At what point in the bill is the amendment to come in?

Mr. LODGE. In line 11, after the word "railroad," to insert "by pipe line."

The PRESIDENT pro tempore. There should be a comma after the word "railroad."

Mr. LODGE. Insert a comma after the word "railroad," and then after that the words "by pipe line."

The PRESIDENT pro tempore. The question is on agreeing to the amendment of the Senator from Massachusetts to the amendment.

The amendment to the amendment was agreed to.

The amendment made as in Committee of the Whole as amended was concurred in.

The PRESIDENT pro tempore. The Secretary will state the next amendment made as in Committee of the Whole.

The SECRETARY. On page 7, line 16, after the word "separately," strike out the word "the" and insert "all."

The amendment was concurred in.

The next amendment made as in Committee of the Whole was, on page 7, line 17, before the word "icing," to insert "storage charges."

The amendment was concurred in.

The next amendment made as in Committee of the Whole was, on line 18, after the word "require," to insert "all special privileges or facilities granted or allowed."

The amendment was concurred in.

The next amendment made as in Committee of the Whole was, on page 7, line 20, after the word "part," to strike out "of" and insert "or."

The amendment was concurred in.

The next amendment made as in Committee of the Whole was, on page 7, line 21, after the word "charges," to insert "or the value of the service rendered to the passenger, shipper, or consignee."

The amendment was concurred in.

The next amendment, made as in Committee of the Whole, was, on page 7, line 24, after the word "be," to insert "kept."

The amendment was concurred in.

The next amendment, made as in Committee of the Whole, was, on page 8, line 4, after the word "inspected," to insert:

The provisions of this section shall apply to all traffic, transportation, and facilities defined in section 1 of this act.

The amendment was concurred in.

The next amendment, made as in Committee of the Whole, was, on page 8, line 23, before the word "and," to strike out "established" and insert "filed."

The amendment was concurred in.

The next amendment, made as in Committee of the Whole, was, on page 8, line 25, after the word "days'," to strike out "public notice" and insert "notice to the Commission and to the public, published as aforesaid."

The amendment was concurred in.

The next amendment, made as in Committee of the Whole, was, on page 9, after line 12, to strike out, beginning with the word "And," in line 13, down to and including the word "force," in line 21.

The amendment was concurred in.

The next amendment, made as in Committee of the Whole, was, on page 9, after line 21, to insert:

The names of the several carriers which are parties to any joint tariff shall be specified therein, and each of the parties thereto, other than the one filing the same, shall file with the Commission such evidence of concurrence therein or acceptance thereof as may be required or approved by the Commission, and where such evidence of concurrence or acceptance is filed it shall not be necessary for the carriers filing the same to also file copies of the tariffs in which they are named as parties.

The amendment was concurred in.

The next amendment, made as in Committee of the Whole, was, on page 10, beginning with the word "Every," in line 5, to strike out down to and including the word "same," in line 10.

The amendment was concurred in.

The next amendment, made as in Committee of the Whole, was, on page 10, line 10, after the word "Every," to strike out "such."

The amendment was concurred in.

The next amendment, made as in Committee of the Whole, was, on page 10, line 11, after the word "carrier," to insert "subject to this act."

The amendment was concurred in.

The next amendment, made as in Committee of the Whole, was, on page 10, line 14, after the word "party," to strike out, beginning with the word "And," down to and including line 21 on page 11.

The amendment was concurred in.

The next amendment, made as in Committee of the Whole, was, on page 12, beginning with the word "If," in line 3, to strike out down to and including line 4 on page 13.

The amendment was concurred in.

The next amendment made as in Committee of the Whole was, on page 13, after line 4, to insert:

No carrier shall, unless otherwise provided by this act, engage or participate in the transportation of passengers or property, as defined in the first section of this act, unless the rates, fares, and charges upon which the same are transported by said carrier have been filed and published in accordance with the provisions of this section; nor shall any carrier charge or demand or collect or receive a greater or less or different compensation for such transportation of passengers or property, or for any service in connection therewith, between the points named in such tariffs than the rates, fares, and charges which are specified in the tariff filed and in effect at the time; nor shall any carrier refund or remit in any manner or by any device any portion of the rates, fares, and charges so specified, nor extend to any shipper or person any privileges or facilities in the transportation of passengers or property, except such as are specified in such tariffs.

The amendment was concurred in.

The next amendment made as in Committee of the Whole was, on page 13, after line 21, to insert:

That in time of war or threatened war preference and precedence shall, upon the representation of the President of the United States of the need therefor, be given, over all other traffic, to the transportation of troops and material of war, and carriers shall adopt every means within their control to facilitate and expedite the military traffic.

The amendment was concurred in.

The next amendment made as in Committee of the Whole was, on page 14, after line 2, to insert:

That section 1 of the act entitled "An act to further regulate commerce with foreign nations and among the States," approved February 19, 1903, be amended so as to read as follows:

"That anything done or omitted to be done by a corporation common carrier subject to the act to regulate commerce and the acts amendatory thereof, which, if done or omitted to be done by any director or officer thereof, or any receiver, trustee, lessee, agent, or person acting for or employed by such corporation, would constitute a misdemeanor under said acts or under this act, shall also be held to be a misdemeanor committed by such corporation, and upon conviction thereof it shall be subject to like penalties as are prescribed in said acts or by this act with reference to such persons, except as such penalties are herein changed. The willful failure upon the part of any carrier subject to said acts to file and publish the tariffs or rates and charges as required by said acts, or strictly to observe such tariffs until changed according to law, shall be a misdemeanor, and upon conviction thereof the corporation offending shall be subject to a fine of not less than $1,000 nor more than $20,000 for each offense; and it shall be unlawful for any person, persons, or corporation to offer, grant, or give, or to solicit, accept, or receive any rebate, concession, or discrimination in respect to the transportation of any property in interstate or foreign commerce by any common carrier subject to said act to regulate commerce and the acts amendatory thereto whereby any such property shall by any device whatever be transported at a less rate than that named in the tariffs published and filed by such carrier, as is required by said act to regulate commerce and the acts amendatory thereto, or whereby any other advantage is given or discrimination is practiced. Every person or corporation who shall offer, grant, or give, or solicit, accept, or receive any such rebates, concession, or discrimination shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than $1,000 nor more than $20,000: *Provided*, That any person, or any officer or director of any corporation subject to the provisions of this act, or the act to regulate commerce and the acts amendatory thereof, or any receiver, trustee, lessee, agent, or person acting for or employed by any such corporation, who shall be convicted as aforesaid, shall, in addition to the fine herein provided for, be liable to imprisonment in the penitentiary for a term of not exceeding two years, or both such fine and imprisonment, in the discretion of the court. Every violation of this section shall be prosecuted in any court of the United States having jurisdiction of crimes within the district in which such violation was committed, or through which the transportation may have been conducted; and whenever the offense is begun in one jurisdiction and completed in another it may be dealt with, inquired of, tried, determined, and punished in either jurisdiction in the same manner as if the offense had been actually and wholly committed therein.

"In construing and enforcing the provisions of this section, the act,

omission, or failure of any officer, agent, or other person acting for or employed by any common carrier or shipper, acting within the scope of his employment, shall in every case be also deemed to be the act, omission, or failure of such carrier or shipper, as well as that of the person. Whenever any carrier files with the Interstate Commerce Commission or publishes a particular rate under the provisions of the act to regulate commerce or acts amendatory thereto, or participates in any rates so filed or published, that rate as against such carrier, its officers or agents, in any prosecution begun under this act shall be conclusively deemed to be the legal rate, and any departure from such rate, or any offer to depart therefrom, shall be deemed to be an offense under this section of this act."

Mr. LODGE. I desire to offer an amendment to the paragraph which has just been read. In line 11, page 15, after the word "shall," I move to insert the words "knowingly and willfully."

Mr. TILLMAN. Mr. President, I have had very little experience in the law, but what little I have had, in one instance had to do with those very words. When they were inserted, the difficulty of proving that it was willfully done destroyed the opportunity to inflict punishment. I think the Senator will emasculate and practically take all the backbone out of our effort to stop this vicious and infamous business of giving rebates if he undertakes to put those words in. I hope he will not insist upon the amendment.

Mr. LODGE. Mr. President, it seems to me merely just to put in those words. On page 14, where it is a mere question of a fine for not publishing tariffs and rates, it is required to be a willful failure, and on page 15 we propose to inflict—very properly, as I regard it—the punishment of imprisonment. To provide that the officers controlling a railroad shall be held and put in prison for, perhaps, the mere error of a subordinate a thousand miles away—a mere mistake—would be an injustice that nobody would wish to embody into law. This is the usual provision.

Mr. WARNER. Will the Senator from Massachusetts let me call his attention to the fact that on page 17, line 8, where it is only a fine, the act is required to be knowingly and willfully done?

Mr. LODGE. I was going to call attention to that. When we come to deal with that portion which applies to the carrier, to the other party to the transaction we want to end, in the amendment as introduced by the Senator from North Dakota and carried, the words "knowingly and willfully" are put in. Now we require that, and require it properly, where it is proposed to impose a fine alone upon the shipper, and yet, as it stands, we would impose imprisonment upon the officer of any railroad whether it was through intention or whether it was a mere accident. It seems to me that it would be grossly unjust to leave out those words.

Mr. McCUMBER. I wish to call the Senator's attention to one other feature in this matter, and that is that these penalties apply to all kinds of discriminations. The law specifies simply an unlawful or unjust discrimination. That presupposes that there may be some character of discrimination which is not unjust, and the line of demarcation between the just and the unjust is one which will have to be determined by the court in nearly every instance. Therefore a person might act in the very best of faith, supposing that he is conforming entirely to our requirements, and yet, being unable to know what the court may hold in the matter of an unjust discrimination as against a just discrimination, he would be held guilty and punished, although he did it unknowingly and not willfully. For this reason alone, it seems to me, the words should be put in.

The Senator from South Carolina will understand, of course, that every man is presumed to intend that which naturally flows from his acts, but when the act itself is not of a criminal nature, "willfully" or "maliciously" or "intentionally" ought to be included.

Mr. FULTON. I should like to suggest to the Senator that the words "knowingly and willfully," if inserted, should be inserted after the word "solicit," so as to qualify the words "accept or receive" and also qualify the word "discrimination." The reason I suggest that is this: It is impossible, it seems to me, that a carrier should offer or grant rebates without knowing it or should offer or grant terms other than those named in its schedules without knowing it. It might be possible that one would accept or receive a rebate, it might be possible that a discrimination would be made, without it being done knowingly.

Mr. LODGE. I think it is perfectly possible that a clerk at some distant point might give a mistaken rate; but a man can not very well solicit a discriminatory rate without knowing it. We apply it to the whole. I do not see why we should be so very tender to the shipper, and then take this exceptional course established or published in the schedules without knowing it. toward the officers of the roads.

Mr. FULTON. Here is the distinction. The shipper may accept or receive a rebate or a rate other than that which is established or published in the schedules without knowing it. That might be possible. But that a representative of a transportation company could offer or grant a rebate without knowing it, it seems to me is practically impossible.

The clerk or the agent at the distant point, to whom the Senator refers, has the schedules before him and knows what the published and established schedules of rates are, and there could not be any reason or any chance for him to make a mistake. I think, however, the words "knowingly and willfully" might properly be inserted after the word "solicit," between that and "accept," so as to read, "knowingly and willfully accept or receive any such rebates, concession, or discrimination," etc.

Mr. LODGE. It covers not only rebates, but concessions, discriminations, and every sort of infraction of the orders of the Commission. I prefer to have the question taken on the amendment at the point I offered it.

The PRESIDENT pro tempore. The Senator from Massachusetts offers an amendment, which will be stated.

The SECRETARY. On page 15, line 11, after the word "shall," insert "knowingly and willfully;" so that if amended it will read:

Every person or corporation who shall knowingly and willfully offer, grant, or give or solicit, accept or receive.

Mr. FORAKER. Mr. President, I favor the adoption of the amendment that the Senator from Massachusetts [Mr. LODGE] has offered. I do not rise, however, to speak to that, but only to put in the RECORD something I did not have at my command when I was speaking upon this amendment a few days ago. There was a good deal of discussion as to how it came about that in the enactment of the Elkins law the provision of imprisonment for violations of the interstate-commerce act was eliminated from the statute. I said in that connection that I understood that the Interstate Commerce Commissioners had recommended in their official reports that we abolish the provision for imprisonment, and I said, in addition to that, that at the time of the hearing before the Interstate Commerce Committee members of the Interstate Commerce Commission who appeared before the committee recommended that imprisonment be abolished.

There having been some dispute of that proposition, I have taken the trouble to look it up, and I now have here, which I send to the desk, the report of the Committee on Interstate and Foreign Commerce, of the House of Representatives, made on the Elkins bill—Senate bill 7053—a report made February 12, 1903. It is a report which embodies in part the testimony of both Mr. Knapp, Chairman of the Interstate Commerce Commission, and Mr. Fifer, who was at that time a member of the Interstate Commerce Commission, and who appeared in that capacity. I ask the Secretary to read first what is marked on page 3, an extract from the testimony of Mr. Knapp, and then to read from the following page the extract that is marked from the testimony of Mr. Fifer.

The PRESIDENT pro tempore. The Secretary will read as requested, if there is no objection.

The Secretary read as follows:

Hon. Martin A. Knapp, Chairman of the Interstate Commerce Commission, said:

* * * * * * *

"It is idle to suppose that you can apply criminal remedies in the state of the criminal law for the correction of such abuses. It does not happen; it will not happen. But I believe that if the corporation could be indicted, if the officials, the subordinate officials, the competitors, or their representatives, or anybody having knowledge of the transaction could be examined before the Commission and compelled to disclose the facts on which the corporation was liable, then the corporation could be indicted and mulcted with a fine. Until that can be done, and corporation carriers be subjected to large pecuniary losses as a result of these offenses, not much will happen to correct them in the way of criminal remedies.

"Mr. STEWART. Do you not think that imprisonment in addition to a fine would have a good effect?

Mr. KNAPP. No, Mr. Stewart, I do not. While I regard these offenses as involving, in many cases, a very high degree of moral turpitude, and I think there are more serious wrongs against order and the inalienable rights of the citizen than burglary or larceny, still we have to take the facts as they are and public sentiment as it exists, and in view of that it is my judgment that punishment by imprisonment instead of being an aid is a hindrance. It is a thing which operates against getting information necessary to convict.

Mr. STEWART. Do you think a fine, however large, would deter these large corporations?

Mr. KNAPP. Yes; and then there is another reason. You can not do anything to a corporation except fine it, and it does not quite satisfy the sense of justice to say that the real offender shall only be fined, while some paid subordinate in lesser degree may possibly go to jail. Now, I believe that if we could get this law in shape where it would be practically feasible, and in many cases comparatively easy to prove the offense against the corporation, and that corporation could be held to pay a large fine, it would not be simply the pecuniary loss, but the publicity—the fact that the railroad had been indicted and compelled to pay a large fine—would operate as a powerful deterrent, and I do not think we shall get along very far in preventing rate cutting by criminal methods until you gentlemen change the law in that regard.

* * * * * * *

Hon. Joseph W. Fifer, a member of the Interstate Commerce Commission, said:

* * * * * * *

"Now, how are you going to prevent, how are you going to stop, these violations of the act which are made criminal? You have been told by my colleagues that there is no penalty denounced against the carrier by the law, and that is true. Gentlemen, these violations are what the law calls malum prohibita, and I care not what certain individuals may think of it, mankind generally hold that the same moral turpitude does not attach to an act of that kind as does to a crime, which is malum in se, such as burglary and larceny, crimes in the absence of all law.

"And you can see, bearing that in mind, what a great difficulty confronts the Commission when it undertakes to enforce the criminal features of the act. Many statutory prohibitions, acts that are made misdemeanors by a statute, a short time ago were no offenses at all. Yesterday the act violated no law; to-day it is made a penal offense, and the offender is subject to a heavy fine and a term in the penitentiary.

"These men have friends; they have standing in the community. The whole community may know that they have at different times violated the law, but they have just as many friends as they had before. They are not ostracised in society; and you undertake to convict one of them and you meet great difficulties. Now, what should be done? Judge Knapp has told you, and in that I agree with him, that the corporation itself should be made subject to indictment, and upon conviction it should be punished; of course, it can not be imprisoned; it loses no caste in society, and every person who is cognizant of the facts can be compelled to testify and there is no immunity; and you know, as practical men, under those circumstances you can get testimony and you can get conviction, and if the penalty is large enough, fixed by the law, it will be just as much of a deterrent as the other, and the testimony will be easily acquired."

Mr. FORAKER. Mr. President, I put that in the RECORD, as I have already indicated, only for the purpose of showing authoritatively and conclusively how it came about that the Interstate Commerce Committee reported a bill favoring the abolition of imprisonment. It was not, as it has been stated in this Chamber during the progress of this debate, at the request of any railroad. I never heard of any request of that nature. But it was upon the recommendation made in their reports, as I understood those reports at the time and understand them now, and upon the recommendation orally and before the committee in the form in which it has just been read at the desk of different members of the Interstate Commerce Commission that that action was taken. It was taken not until after we were satisfied, by what those charged with the duty of enforcing the law told us, that it had become a practical impossibility to enforce the law. That action was not taken until they had satisfied us of that by the representations they made to us.

I stated some days ago, when this amendment was under discussion, that I was one of the last members of the committee to agree to the abolishment of imprisonment, not that I doubted what they said to us, but because I thought it was bad policy under all the circumstances. I did not doubt what they said, because they had knowledge and I did not have knowledge, and I thought I could understand how they might have had the experience and might have reached the conclusions and the opinions of which they were giving us the benefit. But, however, all that may be the sentiment abroad in the country, as it is here in this Chamber, is of such a character that I think we should restore that provision. Therefore I voted for it when the Senator from Massachusetts [Mr. LODGE] offered the amendment some days ago. But I have an idea that the result of practical experience under it will prove to be just what those Commissioners said it was when it was in force before. It will be, to employ the language of Chairman Knapp, a hindrance instead of a help.

Mr. LA FOLLETTE. Mr. President, whatever controversy there was between the Senator from Ohio [Mr. FORAKER] and myself with respect to this matter relating to the position taken by the Commission in its reports made to Congress, I asserted that no recommendation could be found in the reports of the Commission for the abolition of the penalty of imprisonment for violations of the interstate-commerce law. I maintain that is so. The Senator from Ohio some days ago submitted to me the document, extracts from which he caused to be read. It has been found that two of the Commissioners, in the many times the Commissioners have been before the committees of Congress testifying with respect to these matters, under examination made the statements which have just been read.

It is a fact, however, that the reports of the Commission made to the Congress have emphasized their position, as a body, that the penalty of imprisonment should not be abolished. It is a further fact that in one of their reports they cite the persistency of railroad companies in urging before the committees of Congress the abolition of imprisonment as a penalty.

Mr. GALLINGER. Mr. President, as I remember the matter, during the entire time that the imprisonment clause was in the law there was but one conviction, and that of a subordinate, who perhaps ought not to have been punished with any great severity. In view of that fact, and in view of the further fact that the Interstate Commerce Commissioners had testified before a committee of Congress, as I was aware, that in their judgment it was not desirable to retain that clause in the law, I voted against inserting it in the present bill. It is true the minority that voted against it was not very large, the distinguished Senator from Alabama and I constituting the minority.

I have not changed my mind about it. I believe it is, to use a somewhat common phrase, "a water haul" at best; that it will not result in the better enforcement of the law. But the Senate has decided otherwise, and of course the Senator from Alabama and I bow gracefully to the decision of the Senate.

The PRESIDING OFFICER (Mr. KEAN in the chair). The question is on agreeing to the amendment proposed by the Senator from Massachusetts.

Mr. PETTUS. I ask that the amendment be stated.

The SECRETARY. On page 15, line 11, after the word "shall," insert the words "knowingly and willfully," so that if amended it will read:

Every person or corporation who shall knowingly and willfully offer, grant, or give, or solicit, accept, or receive any such rebates, etc.

Mr. BAILEY. Mr. President, I am afraid we are about to make a serious mistake when we make it a crime or a misdemeanor for a shipper to accept a rebate, because if the carrier which gives a rebate commits a crime and the shipper who receives a rebate commits a crime, the Government is left without a witness against either, except under the most extraordinary circumstances. The shipper can never receive a rebate until after the carrier has paid it; and if we exempt the shipper from criminal prosecution, then the Government can indict the carrier and summon every shipper to court to testify about the transaction. But when you summon a shipper and put him on the witness stand, if, in accepting the rebate he has committed a crime, he has a right to seal his lips; and I do not believe that the fine which this bill imposes upon him is a sufficient deterrent to compensate the Government for the loss of the shipper's testimony.

My own opinion is that it would be better to strike out that part of this law which penalizes the act of the shipper, so that the Government may have the right to summon him to the trial of an indicted carrier and compel him to bear witness to the transaction. We have agreed that a mere fine is not adequate to the correction of the evil, and we are restoring the penalty of imprisonment. Yet while we are strengthening again the law against the carrier we are defeating convictions under it by closing the mouth of the very men upon whose testimony the conviction could be secured.

Mr. KNOX. Mr. President——

The PRESIDING OFFICER. Does the Senator from Texas yield to the Senator from Pennsylvania?

Mr. BAILEY. Certainly.

Mr. KNOX. Under the law now, as I understand it, you can call the shipper. The fact that it is a misdemeanor and he participated in it is no reason why he can not be compelled to give his testimony. The only thing he does is to secure immunity.

Mr. BAILEY. The Supreme Court has said you can do that, but the Senator from Pennsylvania will agree with me that that is a very doubtful decision. Assume that the decision makes the law; I do not believe that it meets the purpose and intention of the constitutional protection. The Constitution does not say that a man shall not be compelled to bear witness against himself unless the Government grants him immunity. But the court, with the help of Congress, has added that qualification which our fathers did not make.

The Senator from Pennsylvania knows better than I do, because his experience in the courts was longer and more varied than mine, that it frequently happens that out of one transaction and the knowledge procured by the prosecuting officers upon that trial comes a knowledge upon which other prosecutions may be based, not a prosecution relating to the very transaction under judicial examination, but other transactions, and the immunity does not go as far as the Constitution intended the protection to reach.

The shipper owes the public really no obligation. The carrier's obligation is to transport every man and to transport every man's property for a fair compensation, and to transport every man and every man's property for the same compensation as he charges everybody else for a like service. But the shipper is under no such obligation to the public. I do not question the power of Congress to denounce as a crime the conduct of a shipper who accepts rebates, but I do believe that the penalty against the shipper will interfere with the Government's successful prosecution of the carriers——

Mr. CLARKE of Arkansas. Will the Senator from Texas yield for a question?

Mr. BAILEY. Certainly.

Mr. CLARKE of Arkansas. Could not both purposes be accomplished by converting the proceeding against the shipper who wrongfully receives a rebate into a civil action?

Mr. BAILEY. That is true; and I should very well like to see that. I was going to suggest that we make it a crime to solicit a rebate from a railroad. Then when one of these overgrown combinations tells a railroad traffic manager that unless it is given a rebate it will give its shipments to some other railroad, the railroad manager would have some inducement to tell the district attorney that he was satisfied that this corporation is securing rebates. The district attorney will ask: "Why are you so satisfied?" and the answer will be: "Because they told me that if I did not give them rebates they would ship over the other line."

That is not conclusive, but it is sufficient to put the district attorney upon inquiry. I would like to follow the suggestion of the Senator from Arkansas, which is, in some measure, covered by an amendment proposed the other afternoon by the Senator from North Dakota, and couple with that a provision making the solicitation of a rebate an offense. Then you can use the carrier's testimony against the soliciting shipper and you can use the shipper's testimony against the rebating carrier. You would, in my opinion, do more practical good in that way toward the accomplishment of the end which I assume we all desire than by this provision.

Mr. McCUMBER. Mr. President, I think the Senator is a little ahead of the time, possibly, in the argument upon this proposition, as we have not quite reached it, but inasmuch as he has raised the question, I wish to say to the Senator that I believe the object is not so much to punish some one as to secure a certain result, the absolute elimination of the rebate business or any other special discrimination.

I invite the Senator's attention to the fact that where one single dollar has been obtained in rebates by the solicitation of the railroad companies one thousand dollars have been extorted from the railway companies by the great corporations or trusts. They, therefore, are the principal criminals in this transaction.

I do not wholly agree with the Senator from Texas in the annunciation of the doctrine that the shipper owes no public duty whatever.

Mr. BAILEY. Will the Senator permit me to ask him a question?

Mr. McCUMBER. Certainly.

Mr. BAILEY. A rebate could not be obtained without soliciting it, and therefore the mere solicitation of it would be as much a crime——

Mr. McCUMBER. But it might be offered without any solicitation.

Mr. BAILEY. I have never known anybody to hunt somebody else to give them something unless the other people were asking for it. There may be such philanthropists as that engaged in the railroad business, but I am not aware of it. I think they never part with any of their earnings except for the purpose of increasing the earning in time to come. So it seems to me that if you punish the solicitation rather than the acceptance you enable the Government to use both witnesses, whereas otherwise you can use neither of them without violating what, in my opinion, is a sound view of the Constitution.

Mr. McCUMBER. I think the Senator will agree with me in the statement that the usual method by which rebates are secured is that a great corporation, having an immense amount of shipments, goes to a railway and says to that railway, "We have a sufficient amount of business which, if taken away entirely from your company, would cripple you to a great extent. We wish to get some advantage over our adversaries, and unless you can give us a rebate sufficient to make it an object to us to ship over your lines we can immediately ship over any other line between the great fields of production and the fields of consumption." The railway company, through its agent, its traffic manager, desiring to protect the railway against the loss of this business, is practically compelled to accept the proposition or solicitation, or, in better words, the extortion, on the part of the great trust. I think I could name five of the great trusts in this country which to-day are receiving in rebates yearly more than two and a half million dollars.

Now, if we strike directly at the root of this evil, at the guilty party, by any process, we then will accomplish a great deal more than we will to strike at the party from whom the extortion is made. If we were to excuse either, I would far rather excuse the railway company and get after the great corporations that enforce the rebate; and I am certain that the result would be far better.

Mr. BAILEY. Mr. President——

The PRESIDENT pro tempore. Does the Senator from North Dakota yield to the Senator from Texas?

Mr. McCUMBER. Certainly.

Mr. BAILEY. The Senator has reached a point which I intended next to suggest. If we are going to punish them at all and thus deprive the Government of the benefit of their testimony, let us put them in the penitentiary, just like you do the railroad officers.

Mr. McCUMBER. It is very much easier, Mr. President, to collect a sum of money than it is to send a man to the penitentiary. Sometimes the collection of a large sum of money by a great corporation is more effective than the penitentiary sentence of some one who is simply the unimportant agent of that company. You are striking more directly at the heart of the company when you compel it to pay back thrice over the sum that it has received.

Mr. BAILEY. That is precisely the same argument which has been made against restoring the penalty of imprisonment against the carrier. If it is good as against the shipper it must be good as against the carrier.

Mr. McCUMBER. There is no doubt but that it has its good points.

Mr. BAILEY. My belief is that if these five great companies have been collecting two and a half million dollars in rebates, the fine of a few thousand dollars is a mere bagatelle to them.

Mr. McCUMBER. Certainly.

Mr. BAILEY. Then put the officers who collect it in the penitentiary, and we will at least relieve the country of their depredations for a time.

Mr. McCUMBER. But if they have collected $3,000,000 and are compelled at the end of the year to pay back $9,000,000, that will be the last of rebates, so far as these corporations are concerned.

Mr. BAILEY. But if we are to judge by the size of the fines that have been heretofore imposed, the fines provided in this bill will, I hardly think, compel any five corporations or any 500 corporations to pay $9,000,000. If imprisonment is the sovereign remedy, let us apply it to both.

Mr. McCUMBER. The Senator directed his argument, as I understood it, to the proposition which was contained in the amendment I offered and was adopted.

I agree with the Senator. In my opinion it would be better to make a civil action out of it, and make it a forfeiture to the Government; and then in a civil action let the Government recover three times the amount and make the limitation fully six years.

I have drawn an amendment to that effect, and I will offer it when we reach that point. It differs from the other only to the extent of making it a civil action, making the forfeiture inure to the benefit of the Government, so as to make it the proper party to the action, and providing that whenever the Attorney-General has reason to believe that such rebates are being accepted he may bring the action in the proper court to recover three times the amount.

A similar bill has already passed the House. I do not think it is as good, because it divides and subdivides it into about four different characters of actions—one where it is knowingly done, one where it is done through inadvertence, and there is another division which I have not in mind at the present time. But I think the reports of the press of the conutry, which to some extent I believe represent the sentiment of the country, will justify me in the assertion that nothing will reach more directly toward this evil than an immense fine—not imprisonment, but an immense fine—by a civil or criminal action, and preferably a civil action against those great trusts.

The PRESIDENT pro tempore. The question is on the amendment offered by the Senator from Massachusetts to the amendment, which will be read.

The SECRETARY. On page 15, line 11, after the word "shall," insert "knowingly and willfully."

The amendment to the amendment was agreed to.

The SECRETARY. On page 16, also insert, beginning with line 8——

Mr. GALLINGER. Throughout the bill the phraseology, where it says "An act to regulate commerce and acts amendatory thereof," is the usual phraseology, but on page 15, in two instances, line 5 and line 9, it says "the acts amendatory thereto." I move to insert the word "thereof" instead of the word "thereto" in those two cases. It is simply to preserve uniformity.

The PRESIDENT pro tempore. The amendment will be stated.

The SECRETARY. On page 15, line 5, strike out "thereto" and insert "thereof," and in line 9 strike out "thereto" and insert "thereof."

The amendment to the amendment was agreed to.

The PRESIDENT pro tempore. The question is on concurring in the amendment as amended.

Mr. STONE. Mr. President, I listened to the discussion just had between the Senator from Texas [Mr. BAILEY] and the Senator from North Dakota [Mr. MCCUMBER], which seems not to have resulted in any direct proposition as the amendment stands. It is clearly intended to reach shippers as well as carriers and I concur in the view that it ought to reach shippers as well as carriers. There has been some doubt expressed, however, both in and out of the Senate, as to whether the phraseology here does include the shipper. With a view of putting that beyond doubt, I offer an amendment. After the word "corporation" in line 11, page 15, I move to insert a comma and the words "whether carrier or shipper" and a comma.

The PRESIDENT pro tempore. The Senator from Missouri offers an amendment, which will be read.

The SECRETARY. On page 15, line 11, after the word "corporation," insert a comma and the words "whether carrier or shipper" and a comma.

The PRESIDENT pro tempore. The question is on agreeing to the amendment of the Senator from Missouri to the amendment.

The amendment to the amendment was agreed to.

Mr. GALLINGER. On line 17, page 16, let the word "thereto" be stricken out and the word "thereof" be inserted.

The PRESIDENT pro tempore. The amendment will be stated.

The SECRETARY. On page 16, line 17, after the word "amendatory," strike out "thereto" and insert "thereof."

The amendment to the amendment was agreed to.

Mr. CULBERSON. Mr. President, I desire to take advantage of the situation just for a moment to make a statement.

On the 21st of March I proposed, expecting to offer it later, an amendment to the pending bill in the shape of a separate section prohibiting corporations engaged in interstate commerce from contributing to campaign committees. Since that paper was prepared the Committee on Privileges and Elections, April 27, 1906, reported favorably a bill unanimously, which accomplishes, if it passes, what was designed by the amendment to which I have referred. I therefore desire to state at this time that I will not offer the amendment as I had otherwise intended to do, and will ask that the bill reported favorably from the Committee on Privileges and Elections may be printed in the RECORD.

The PRESIDENT pro tempore. The Chair hears no objection, and the order is made.

The bill referred to is as follows:

A bill (S. 4563) to prohibit corporations from making money contributions in connection with political elections.

Be it enacted, etc., That it shall be unlawful for any national bank, or any corporation organized by authority of any laws of Congress, to make a money contribution in connection with any election to any political office. It shall also be unlawful for any corporation whatever to make a money contribution in connection with any election at which Presidential and Vice-Presidential electors or a Representative in Congress is to be voted for or any election by any State legislature of a United States Senator. Every corporation which shall make any contribution in violation of the foregoing provisions shall be subject to a fine not exceeding $5,000, and every officer or director of any corporation who shall consent to any contribution by the corporation in violation of the foregoing provisions shall be subject to a fine of not exceeding $1,000.

Mr. MCCUMBER. I move to amend the pending amendment made as in Committee of the Whole by inserting, after the word "the," in line 9, on page 16, the words "willful and intentional;" so as to read:

In construing and enforcing the provisions of this section, the willful and intentional act, omission, or failure, etc.

The PRESIDENT pro tempore. The Senator from North Dakota offers an amendment to the amendment, which will be read.

The SECRETARY. On page 16, line 9, before the word "act," insert "willful and intentional."

Mr. MCCUMBER. This is simply in conformity with the other amendment that was accepted of like words on the previous page. I simply call the Senate's attention to the fact that in this section the act or omission of an officer or agent who is the mere employee of the company to do any certain act makes the company itself absolutely liable. In other words, not even a willful act, not even an intentional omission, but the slightest omission, on the part of one of the officers would hold the balance of the officers liable, because all officers having knowledge afterwards are made a party to any of these offenses. It seems to me that in constructing a criminal statute we ought not to convict one person upon the unintentional omission at least of another person.

The PRESIDENT pro tempore. The question is on agreeing to the amendment to the amendment made as in Committee of the Whole.

Mr. NELSON. Mr. President, that is a most dangerous amendment. Under it it will be almost impossible to convict any corporation. Unless you can show that an employee of a corporation has done any of these acts willfully and intentionally you can not make the corporation guilty. It is entirely different from the other case, where the question was as to convicting an employee of the corporation. In that case it was proper enough to require that the act should be willful and intentional, but to inject this qualification here practically renders it impossible to convict any corporation, because it will always have the excuse that the employee did it unintentionally and not knowingly.

Mr. TILLMAN. Mr. President, I wish to call the attention of the Senator from North Dakota to line 11, on page 16, the clause "acting within the scope of his employment." This shows that in this case an employee would necessarily be acting willfully and maliciously and knowingly, and, therefore, I hope the amendment to the amendment will not be adopted.

The amendment to the amendment was rejected.

The amendment as amended was concurred in.

The PRESIDENT pro tempore. The Secretary will read the next amendment made as in Committee of the Whole.

The SECRETARY. On page 16, after line 23, the Senate, as in Committee of the Whole, inserted the following:

That section 10 of said act entitled "An act to regulate commerce," approved February 4, 1887, be amended by adding thereto the following:

"Any person, corporation, or company who shall deliver property for interstate transportation to any common carrier, subject to the provisions of this act, or for whom, as consignor or consignee, any such carrier shall transport property from one State, Territory, or District of the United States to any other State, Territory, or District of the United States or foreign country, who shall knowingly and willfully, by employee, agent, officer, or otherwise, directly or indirectly, by or through any means or device whatsoever, receive or accept from such common carrier any sum of money, or any other valuable consideration, as a rebate or offset against the regular charges for transportation of such property, as fixed by the schedules of rates provided for in this act, shall be deemed guilty of a fraud, which is hereby declared to be a misdemeanor, and shall, upon conviction thereof in any court of the United States of competent jurisdiction within the district where such offense was committed, in addition to any other penalties provided by this act, be subjected to a fine equal to three times the sum of money so received or accepted, and three times the value of any other consideration so received or accepted, to be ascertained by the trial court; and in the trial for such offense, all such rebates or other considerations so received or accepted for a period of six years prior to the commencement of the action may be considered, and the said fine shall be three times the total amount of money or three times the total value of such considerations so received or accepted, as the case may be: *Provided*, That the foregoing penalties shall not apply to rebates or considerations received prior to the passage and approval of this act."

Mr. MCCUMBER. I offer what I send to the desk as a substitute for that amendment.

The PRESIDENT pro tempore. The amendment to the amendment will be stated.

Mr. MCCUMBER. It is from line 24, on page 16, to line 6, on page 18.

The SECRETARY. It is proposed to substitute for the remainder of section 2, beginning in line 24, on page 16, and ending in line 6, on page 18, the following:

Any person, corporation, or company who shall deliver property for interstate transportation to any common carrier, subject to the provisions of this act, or for whom, as consignor or consignee, any such carrier shall transport property from one State, Territory, or district of the United States to any other State, Territory, or district of the United States, or foreign country, who shall knowingly and willfully, by employee, agent, officer, or otherwise, directly or indirectly, by or through any means or device whatsoever, receive or accept from such common carrier any sum of money or any other valuable consideration as a rebate or offset against the regular charges for transportation of such property, as fixed by the schedules of rates provided for in this act, shall, in addition to any penalty provided by this act, forfeit to the United States a sum of money three times the amount of money so received or accepted and three times the value of any other consideration so received or accepted, to be ascertained by the trial court; and the Attorney-General of the United States is authorized and directed, whenever he has reasonable grounds to believe that any such person, corporation, or company has knowingly or willfully received or accepted from any such common carrier any sum of money or other valuable consideration as a rebate or offset as aforesaid, to institute in any court of the United States of competent jurisdiction a civil action to collect the said sum or sums so forfeited as aforesaid; and in the trial of said action all such rebates or other considerations so received or accepted for a period of six years prior to the commencement of the action may be included therein, and the amount recovered shall be three times the total amount of money or three times the total value of such consideration so received or accepted or both, as the case may be: *Provided*, That the foregoing penalties shall not apply to rebates or considerations received prior to the passage and approval of this act.

Mr. CLARKE of Arkansas. Mr. President, I think this bill would be very materially improved if that amendment should be adopted. It goes about the business of punishing the shipper who solicits and accepts rebates in the same businesslike way that he goes about the matter of getting the rebate. It is by

making civil action the remedy by which the penalty is to be recovered, instead of a criminal prosecution. We thus get rid of the troublesome question of venue. In criminal prosecutions it is necessary to establish the fact that the rebate was received within a limited territorial jurisdiction.

Then, again, we escape a rule of law that is frequently resorted to for the purpose of defeating justice, and that is that in the prosecution of a criminal action the guilt of the defendant must be established by proof that shows this to the jury beyond a reasonable doubt, while in a civil action, such as is provided for in the pending amendment, the case of the United States can be made out by a preponderance of the testimony offered.

We also escape another rule of law; and that is that persons who are indicted for an offense can not be compelled to testify against themselves, whereas in a civil action either the plaintiff or the defendant may be called as a witness at the option of the other.

It presents a remedy more effective, and therefore a more desirable way of doing what we are seeking to do. I express the hope that there will be no opposition to the amendment on the part of those who believe that the shipper who solicits and receives a rebate should himself be punished. It is only a matter of method, and I think it so far preferable to a criminal prosecution that the mere statement of the difference between the two is all that it is necessary to say about it.

Mr. NELSON. Mr. President, this proposed substitute introduced by the Senator from North Dakota, as well as the amendment reported from the Committee of the Whole, ought not to be in the bill. If Senators will examine the bill, commencing on line 2, page 17, and extending down to the end of line 6, on page 18, they will find that it is substantially covered by the reenactment of the so-called "Elkins law," so far as the penalty is concerned. I call the attention of Senators to the fact that the penalty provided is much stronger and greater. On page 15 you will find this provision:

> Every person or corporation who shall offer, grant, or give, or solicit, accept, or receive any such rebates, concession, or discrimination shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than $1,000 nor more than $20,000.

What is the penalty provided in the amendment offered by the Senator from North Dakota [Mr. McCUMBER], and also in the substitute offered by the Senator from Arkansas [Mr. CLARKE]? It is just three times the amount of the rebate given in a single case. That rebate may be only fifty or sixty dollars in a single case and you fine the man three times that amount; whereas in the preceding paragraph the fine is from $1,000 to $20,000. The preceding paragraph covers the whole case, and the penal provisions are much stronger and better. Therefore, Mr. President, that entire amendment should be rejected.

Mr. CLARKE of Arkansas. May I ask the Senator from Minnesota a question?

Mr. NELSON. Certainly.

Mr. CLARKE of Arkansas. The substitute offered by the Senator from North Dakota, and not by myself, provides that all rebates received within six years may be included in a single civil action.

Mr. NELSON. You can not include them all in one indictment.

Mr. CLARKE of Arkansas. We are not going to do so. It is not proposed to indict anybody. The remedy prescribed is by means of a civil action.

Mr. McCUMBER. It is evident that the Senator from Minnesota [Mr. NELSON] was not in the Chamber or that he did not hear the reading of the substitute. The substitute provides for a civil action instead of a criminal action, and fixes the statute of limitations at six years. It provides for three times the amount of any money received and three times the value of any discrimination in favor of the shipper for a period of that many years. It is not at all inconsistent with any other provision in the bill.

Mr. NELSON. Then it is an entire substitute for the amendment beginning on page 17, commencing with line 2?

Mr. McCUMBER. It is.

Mr. NELSON. Does it only relate to civil actions?

Mr. McCUMBER. That is all.

Mr. NELSON. Then I have no objection to it.

Mr. KEAN. I will say to the Senator from Minnesota that it follows very much the line of a bill already passed by the House of Representatives and now before the Judiciary Committee of the Senate.

The PRESIDENT pro tempore. The question is on the amendment of the Senator from North Dakota [Mr. McCUMBER] to the amendment made as in Committee of the Whole.

The amendment to the amendment was agreed to.

The amendment made as in Committee of the Whole as amended was concurred in.

The next amendment made as in Committee of the Whole was, on page 19, line 20, after the yord "reasonable," to strike out the words "and fairly remunerative."

The amendment was concurred in.

Mr. TILLMAN. I am glad the Senator from Iowa [Mr. ALLISON] is in his seat, because he can possibly give me some light on a question that is causing me a good deal of uneasiness. It has been suggested to me that the words "in its judgment," in lines 19 and 20, on page 19, might possibly render this bill unconstitutional, as involving the delegation of legislative power to the Commission. I should like to have the Senator tell us what his opinion is about those words, and whether or not, in his judgment, they ought to stay in the bill.

Mr. ALLISON. Mr. President, I do not feel that I am sufficiently familiar with the law upon this subject to give the Senator a complete answer; but I will say that, in my judgment, those are essential words to be retained in the bill. They constitute a part of the judicial-review provision which is found in the next section, and it is the opinion of many of the best lawyers with whom I have come in contact that those words ought to be retained. I think it would be very harmful to strike them out, and I hope the Senator from South Carolina will not insist upon doing so.

Mr. TILLMAN. Mr. President, I am not insisting on striking them out; I have not even moved that they go out; but I want to get some good advice from some source, because if this bill shall fail and the Supreme Court shall declare that those words destroy its constitutionality, I want the responsibility to rest on those who put them in the bill and who wish to keep them in it. The bill had those words in it when it came from the other House, and I understand there is a very strong and urgent desire on the part of those who have agreed to the recent compromise arrangement that has obtained on the other side of the Chamber, that they shall stay in. But there must be some good reason for their staying in; and if the constitutionality of the bill shall be destroyed by their remaining in, I want the responsibility to rest where it will belong. I want to move to strike them out simply on the ground of lack of constitutionality.

Mr. ALLISON. Mr. President, I am quite sure that those words are of value in this bill. If we are to have the Commission do what we intend by this bill it shall do, namely, to fix a maximum rate which shall have the force and power of a statute, I think those words are essential; and I fear very much that to strike them out would simply put the Commission in a position where it could only establish or recommend a rate which would be reviewed in all its details by the court. Therefore I hope that the words will not be stricken out, and that the Senator will not move to strike them out.

Mr. TELLER. Mr. President, those words were in the bill when it came from the other House about three months ago.

Mr. ALLISON. They were.

Mr. TELLER. I have interviewed a large number of Senators who are friends of this bill, and I have never succeeded in getting anybody to tell me in what respect the words to which the Senator from South Carolina [Mr. TILLMAN] refers were desirable. They have all given me the same statement the Senator from Iowa [Mr. ALLISON] now makes, that in their judgment those words are desirable, but they fail to say why. Will the Senator from Iowa now tell us why he thinks they ought to be there, and what their office is?

Mr. ALLISON. Mr. President, I believe their office is to give the Commission the power to establish just and reasonable rates—the power to say what a just and reasonable rate is.

Mr. McCUMBER. Mr. President——

The PRESIDENT pro tempore. Does the Senator from Iowa yield to the Senator from North Dakota?

Mr. ALLISON. Certainly.

Mr. McCUMBER. I merely want to ask the Senator a question. I raised the point the other day when I stated that I considered we were very close to the danger line on that proposition. I wish to say to the Senator that it seems to me that we have fixed a standard. That standard which Congress has fixed, and up to which the Commission must measure all its ideas, is the requirement that the rate fixed must be just and reasonable. That is our standard. It is the Congressional standard, if I may use those words.

Mr. ALLISON. It is our standard.

Mr. McCUMBER. All the Commission can do is to exercise its judgment in accordance with this standard. Is there not danger, if, in another section fixing the order, you say that the Commission shall exercise its judgment, instead of the judgment of Congress, that you have conferred the rate-making

power upon the Commission instead of that power being exercised by Congress itself?

I do not believe, if I may interrupt the Senator, that the courts will give any meaning to the words "in its judgment;" but if they do give any meaning to them at all, if they say they mean what they say, then, according to my judgment, this bill would be absolutely unconstitutional because it would transfer the rate-making power from Congress to the Commission; and if they do not give it any meaning whatever, then what is the use of those words being there?

Mr. ALLISON. Mr. President, it seems to me that the Commission must exerices its judgment whether those words are in or out of the bill.

Mr. McCUMBER. But must it not exercise the judgment of Congress, and not its judgment?

Mr. ALLISON. When the Commission has exercised its judgment, or its will, or its opinion, or whatever you may please to call it, as respects the particular case before it, it becomes then the judgment of Congress.

The PRESIDENT pro tempore. The next amendment adopted as in Committee of the Whole will be stated.

Mr. CLARKE of Arkansas. Mr. President, before we pass from section 3, I desire to offer the amendment which I send to the desk. I will not undertake to debate it, but I will call the Senate's attention to its character and the purpose I have in presenting it.

The PRESIDENT pro tempore. The amendment of the Senator from Arkansas will be stated.

The SECRETARY. On page 19, after line 4, it is proposed to insert as an independent paragraph the following:

The Commission shall determine, from investigation and hearing appropriate to the inquiry, the proportions of the entire traffic of any carrier whose rate or rates has been challenged in the manner provided in this act which pertain to interstate and intrastate traffic, respectively, and when said relative proportions of said traffic are so ascertained the Commission shall consider, in fixing a just and reasonable rate under the provisions of this act, the revenue derived from intrastate traffic as part of the gross income of said carrier and make due allowance therefor in establishing the basis for prescribing said just and reasonable rate.

Mr. CLARKE of Arkansas. Mr. President, this amendment is intended to give to the Commission the power to correct a defect that has been disclosed by a decision of the Supreme Court of the United States. In the case of Smythe *v.* Ames, a case that involved the validity of the action of the railway commission of the State of Nebraska, the court said that, in fixing a State rate, it was not competent for the commission to take any notice of the fact that the carrier was also engaged in interstate business, and that the State rate must be fixed with reference to State business. I take it for granted the same rule will apply when the Interstate Commerce Commission proceeds to fix a rate on interstate business. It is obviously unjust to leave out of view the fact that carriers are engaged in carrying both kinds of commerce. There is no reason why there should not be an ascertainment of the relative proportions in volume of the traffic carried by a carrier, so that when the Interstate Commerce Commission proceeds to fix a fair rate for that part carried as interstate commerce it shall know the entire income and the entire business done by the carrier. The valuation and the volume of business are the two principal factors in the problem of fixing rates, and there is no reason why there should exist any doubt on that subject. I believe the Commission ought to be authorized to determine, as one of the preliminary subjects of the investigation, the amount of interstate business done by the road and the amount of State business done by it, so that in fixing its rate notice may be taken of that circumstance and that it may be given such weight as it is legally entitled to have.

The PRESIDENT pro tempore. The question is on the amendment offered by the Senator from Arkansas [Mr. CLARKE].

The amendment was rejected.

Mr. TELLER. On page 19, lines 19 and 20, I move to strike out the words "in its judgment."

The PRESIDENT pro tempore. The amendment will be stated.

The SECRETARY. On page 19, in lines 19 and 20, it is proposed to strike out the words "in its judgment."

Mr. TELLER. Mr. President, a few moments ago I asked the Senator from Iowa [Mr. ALLISON] a question in regard to these words in order that I might get some light on the subject, which, as I have said, I have been for some time trying to get. It is not to be presumed that these words are in the bill for nothing; and we ought to have somebody tell us what they are in for. It is not enough for the Senator from Iowa or some other Senator to tell us that he thinks the words are important. Why are they important? What influence are they to have? In the common language of the country, "What figure do they cut?" Do they mean anything? If they do not mean anything, good legislation requires us to strike them out. I think I know what some Senators on the other side think these words mean. Some of them contend that they will take the question whether or not the rate is a proper rate out of the hands of the courts.

Now, I do not know whether that is what they mean, but if it is, then it is equivalent to saying that the rate shall be final and complete and that the court shall not interfere with it. Do the Senate of the United States want to say that? If they do, let us say it affirmatively. It will be just as safe to say that the court shall not interfere with the rate as to put in something that may be construed by the court into saying that. If the court should believe that that is a declaration that the court can not consider the question, I have not much doubt what will become of the rate bill. I know we hear it stated—it is in the air—that in the great compromise which took place the other day the words "and fairly remunerative" should go out and the words "in its judgment" should not go out. I think I heard something stated on the other side equivalent to that the other day, that that was a thing to be left in. I am willing to leave it in if anybody can show that it will be beneficial to this bill. I am willing to leave it in if anybody can show me that it is not dangerous to leave it in the bill. I believe it to be dangerous, and until I can hear from somebody—with all these constitutional lawyers we have here, cornfield lawyers and all kinds of lawyers—until somebody can suggest some reason why it is there, it seems to me we ought to strike it out. I will wait.

Mr. DOLLIVER rose.

Mr. TELLER. The junior Senator from Iowa is on his feet. Perhaps he can tell me what it means. If he will not take too much time, I will be glad to have him do so.

Mr. DOLLIVER. I will not undertake to do it on terms of that sort.

Mr. TELLER. I will give him all the time I have if he will just tell us what the purpose of it is.

I do not want him to say "I think it is important." I want to know why it is important. I want to know what is the object. I want to know its office—what its effect is, or what the Senator thinks it will be.

Mr. DOLLIVER. Mr. President, taking the floor, then, in my own right, I will state, in a brief way, what are the import and significance of these words. I feel a little delicacy, after all that has happened, to intrude into the domain of constitutional law. At the same time I think I will be pardoned if I point out briefly the line that separates two schools of constitutional thought in respect to this matter. One is represented in a bill introduced in the Senate some time ago by the honorable Senator from West Virginia [Mr. ELKINS]. It will be perceived that this question arises twice in section 4 of the House bill—first, in connection with the condemnation of the rate complained of and, second, in connection with the fixing of the rate that is to be observed in the future. In both these cases the House bill confides a discretion to the Commission. As to the rate complained of, it says if it shall be the opinion of the Commissioners that the rate is unreasonable, they shall condemn it; and as to the rate fixed by the Commission, it says they shall determine and prescribe what will be, in their judgment, a reasonable rate.

Now, the opposite school of opinion is illustrated in the bill introduced by the Senator from West Virginia. It says:

That whenever any rate, fare, charge, or regulation established by any common carrier or carriers for any transportation or other service subject to the act approved February 4, 1887, entitled "An act to regulate commerce," or any act amendatory thereof, shall be unjust and unreasonable or otherwise contrary to law, the Interstate Commerce Commission shall have power, after granting a full hearing to the carrier or carriers affected, to make an order directing the carrier or carriers to modify such rate, fare, charge, or regulation, etc.

And as to fixing the rate the bill says:

But the Commission shall not have power to modify any rate, fare, charge, or regulation established by the carrier or carriers to a greater extent than shall be necessary in order to remove the injustice and unreasonableness or unlawfulness thereof.

It will be perceived, therefore, that if the court hold that the Commission made an error in fixing the rate or in condemning the existing rate, the power of review carries with it full control of the very questions that the Commission has examined into.

The opposite notion is embodied in this bill; that the condemnation of the existing rate shall be in the discretion of the Commission, the words "in their opinion" carrying that idea; and in the fixing of the new rate, the theory of the House bill is that the Commission shall determine as well as prescribe, and the words "in its judgment" carry out that idea. An idea similar to that——

Mr. SPOONER. Will the Senator from Iowa allow me to ask him a question?

Mr. DOLLIVER. Certainly.

Mr. SPOONER. Is there not a distinction between "in their opinion" and "in its judgment?"

Mr. DOLLIVER. I think there is no difference. The honorable Senator from Texas [Mr. BAILEY], introducting an amendment to this bill, evidently was of opinion that the power of Congress over the rate only authorizes the Commission to fix a rate just and reasonable in fact, for on March 21 he introduced this amendment, beginning after the word "what," in line 19, on page 10, to strike out all down to and including the word "prescribed," in line 5, on page 11, and insert the following:

A rate or charge which shall afford a just compensation to the carrier or carriers for the service or services to be performed and a regulation or practice which shall be just and reasonable. The rate or charge, regulation or practice so determined and prescribed shall be the only lawful rate or charge, regulation or practice, and the carrier or carriers shall not thereafter demand or collect any other rate or charge or follow any other regulation or practice.

On the same day the Senator from Texas [Mr. BAILEY] submitted the following amendment:

Insert the following:

"Any carrier or person, or corporation, party to such complaint, and dissatisfied with the rate or charge, regulation or practice so established and prescribed, may file a bill against the Commission in any circuit court of the United States for the district in which any portion of the line of the carrier or carriers may be located, alleging that such rate or charge will not afford a just compensation for the service or services to be performed, or that the regulation or practice is unjust and unreasonable; and if upon the hearing the court shall find that such rate or charge will not afford a just compensation for the service or services to be performed, or that the regulation or practice is unjust and unreasonable, it shall enjoin the enforcement of the same: *Provided, however,* That no rate or charge, regulation or practice prescribed by the Commission shall be set aside or suspended by any preliminary or interlocutory decree or order of the court. Said proceedings shall have precedence over all other cases on the docket of a different character, and the court shall have power to make orders to secure the attendance of persons from any part of the United States, and the existing laws relative to evidence and proceedings under the acts to regulate commerce shall be applicable. Either party to said proceeding shall have the right to appeal directly to the Supreme Court of the United States, and such appeal shall have precedence in said Supreme Court over all other cases of a different character pending therein."

Now, therefore, it will be perceived that the authority of the Commission granted in these amendments is to fix a rate which shall be a just compensation to the carrier for the service performed and reasonable, and whether they have done it or not is made a question for the courts.

Following that idea, the amendment of the honorable Senator from Texas as to review confides in the court the exact jurisdiction that his amendment had already confided to the Commission. I will not discuss the question whether the review that is provided for in his amendment is broad or narrow, but I will say that it does not take a very great lawyer to perceive that the jurisdiction which his amendment gives to the court is exactly the same jurisdiction that he gives to the Commission and is conveyed in exactly the same language.

Now, in drafting this bill the framers of it, I will say, were guided very largely by the speech delivered at Pittsburg by the honorable Senator from Pennsylvania [Mr. KNOX] on the 3d of November, a speech which reads almost like a judgment from the Supreme Bench. His notion evidently was that the Commission ought to have the discretion to prescribe the rate, for he says:

The Commission should have the power, if it finds the complaint well founded, to declare what shall be a just, fairly remunerative, and reasonable rate or practice to be charged or followed in place of the one declared to be unreasonable.

He does not say the Commission shall have authority to fix a just and reasonable rate, but to declare what shall be a just and reasonable rate to be followed in the future; and adopting the principle laid down in that speech, the honorable Senator from Pennsylvania, who, without disparagement to anybody else in this Chamber, is looked upon as one of the most careful and learned of our lawyers, introduced a bill, section 4 of which is as follows:

SEC. 4. That whenever, after full hearing upon such complaint, the said Commission shall determine that any existing rate or rates or practice whatsoever affecting the same, or any regulation or practice whatsoever as aforesaid, relating to any of the aforesaid services or transportation or incidents thereto, to be unjust, unreasonable, or unjustly discriminatory, or unduly preferential or prejudicial, or otherwise in violation of any of the provisions of this act or the acts named in section 1 of this act, it shall be the duty of the Commission to declare and order what, in its judgment, will be a just, reasonable, and fairly remunerative rate or rates, charge or charges, practice or regulation to be charged, imposed, or followed in place of the rate or rates, charge or charges, regulation or practice declared by it to be unjust, unreasonable, unjustly discriminatory, or unduly preferential, under the provisions of any act referred to in section 1 hereof: *Provided,* That when the Commission shall order a rate reduced such reduced rate shall be the maximum to be observed by the carrier, and when the Commission shall order a practice to be changed its order shall be observed by the carrier.

The House bill was not probably drawn after the language of the Senator from Pennsylvania, but it was drawn after a statute of the State of Massachusetts, and I refer to the statute, which is contained in the second volume of the revised laws of that State, page 1034, giving to the commission of that State power to fix the milk rate. I read only that part of it which involves this idea:

SEC. 247. Upon the petition of one or more persons who desire to forward milk by the can over any railroad or any portion or portions thereof, the board of railroad commissioners, after notice to the railroad corporation and a hearing, shall ascertain and compare the tariff established as aforesaid for milk by the can with the rate or price charged or received as aforesaid for milk in large quantities over such railroad or such portion or portions thereof; and if the former is, in the judgment of the board, unreasonably high, as compared with the latter, the board shall revise said tariff and shall fix such rates for milk by the can as in its judgment are fairly proportionate to the rate or price for milk in large quantities, including in both cases the same care and preservation of the milk and the return of the empty cans, as aforesaid; and shall notify the corporation in writing of the rates by the can so fixed over such railroad or such portion or portions thereof; but milk received by one railroad corporation from another shall not be considered as received at the point of junction of the two roads in comparing and fixing as aforesaid rates for milk by the can tendered at such point of junction.

Mr. FORAKER. Let me ask the Senator, if I do not interrupt him, what is the effect of their doing that? Does that rate go into operation without——

Mr. DOLLIVER. Yes, without any appeal; and the penalty for its violation is $5 per can.

Mr. FORAKER. Does the railroad commission of Massachusetts make rates in the way indicated?

Mr. DOLLIVER. They make the milk rate only. I have no doubt that that statute was carefully drawn. If we desire to say that the Commission shall not deal with a rate at all unless it is in fact unreasonable and unjust, that leaves the question open to the courts to say whether the Commission ought to have acted at all or not. That is avoided in this bill by giving discretion to the Commission to find whether the rate is unreasonable.

If we desire that the Commission shall simply be clothed with the power to fix a just and reasonable rate, and we put it in that language, it may be contended that we pass directly to the courts the whole question whether they have complied with the statute. The object of this bill is to confide in the Commission a discretion, first, as to the condemnation of the existing rate, and, second, as to the rate which shall take its place; and we fail in that purpose by merely striking out the words "in its judgment," because the whole sentence would be left there, which obviously confides a jurisdiction and discretion to the Commission. It says they shall determine and prescribe. By striking out the words "in its judgment," in my opinion you do not reach the seat of the constitutional difficulty at all, because you have still left there the power in the Commission to pass upon that question, to determine it and to prescribe the rate.

I do not want the words "in its judgment" stricken out, because the country has come to believe that it is a part of the backbone of the new section 15. With that discretion vested in the Commission, it makes very little difference what jurisdiction you give the court, because the opinions of the court are almost uniform that they will not review a discretion confided to an administrative board, except where there has been abuse or the finding is in conflict with constitutional rights.

Mr. TILLMAN. Is the Senator prepared to declare, as a constitutional lawyer, that those three words will not vitiate the constitutionality of this bill?

Mr. DOLLIVER. As I said in opening, I have never posed as a constitutional lawyer, but I have sought counsel of great constitutional lawyers upon that question, including the Attorney-General, and I rest with confidence in his opinion in respect to that. His notion is that these words are perfectly consonant with sound constitutional principles, and I will add that the experienced lawyers on the Commission, for there are very excellent lawyers on the Interstate Commerce Commission, are unanimously of the opinion that those words ought not only to be preserved in the bill, but that they are entirely consistent with the constitutional limitations which we are bound to observe.

Mr. TILLMAN. All I want to be sure of is that there shall be no danger of this provision being destroyed by the Supreme Court as being unconstitutional. If the Senator and his friends are content to take the responsibility of letting them stay in, on the plea that they narrow the court review, and then the Supreme Court declares them unconstitutional, all right; I am satisfied.

Mr. DOLLIVER. If the Supreme Court decides that Congress can not confide that discretion to the Commission, but that its power is limited to requiring the Commission to fix a just and reasonable rate, passing over to the courts the ques-

tion whether they have done so or not—if this bill is found unconstitutional upon that ground, it will simply indicate that the whole scheme of undertaking to manage this business by a commission is impracticable, and will drive every one of us to the position which has been so ably defended by the Senator from Ohio [Mr. FORAKER], that we ought to go directly to the courts without the intervention of the Commission at all.

Mr. KNOX. Mr. President, it has not been my intention to make any observation upon this proposed amendment to strike out of the bill the words "in its judgment," but it seems to me that I am constrained by the references that have been made by the junior Senator from Iowa [Mr. DOLLIVER] to some of my public utterances upon the subject, to at least explain that they have no relation whatever and were not intended to have any relation to the proposition whether these words should remain in the bill. It was perfectly obvious, from the reading of an extract from the short remarks I made in Pittsburg—which, by the way, were confined to fifteen minutes, and were at the tail end of a Pittsburg banquet, and, of course, are not to be regarded as a man's most solemn utterances—that they indicate no predilection for the use of those words.

However, it gets pretty close home when the Senator reads from a bill which I prepared and submitted to the Senate in which those words are found, and which, without explanation, would indicate that in my judgment they should remain in the bill. But I think I have a sufficiently adequate explanation for their appearance in the bill which I proposed.

The Senate will remember that when that bill was presented on the 22d day of February, I stated to the Senate the purposes which I entertained, and as it is all contained within a few lines I will read:

> Mr. President, it has been very generally reported, and it is the fact, that I have recently, upon request of different persons interested in the rate-regulation measures now pending before the Senate, submitted my views as to a provision which I deem essential to the certain constitutionality of the bill passed by the House of Representatives. I presented my views by taking out of the bill which I now offer section 5, and that section can not be thoroughly understood independent of its context. It is not my expectation that the bill which I now introduce will receive any further consideration from the committee than they may choose to give it as throwing light upon a provision for review in the courts of the action of the Commission, and if it is of any assistance in that direction I shall be more than satisfied.

The sole purpose that I entertained and expressed at that time in submitting the bill at all was to throw some light upon the proposition of a court review and not with any idea of indicating my views as to the power of the Commission.

The circumstances under which that bill was put together the night before its presentation were these: I had been invited to express my notions of a court review, and I had done so by taking out of the loose leaves of some notes I had made in the nature of a bill this fifth section and had submitted them to the gentleman who had made the inquiry of me. It was not twenty-four hours until I read in various newspapers that I entertained certain views in relation to court review which were not the ones I really entertained, and not the ones which were indicated upon the paper I had submitted.

I therefore felt that it was just to myself that I should let the public know, through the presentation of a bill, exactly what my views were upon that subject; and having been gratuitously arraigned as a railroad Senator I thought it was also just to myself that I should submit my entire work in connection with this bill, so that it might be obvious that I had been laboring upon the side of the public as well as laboring upon the side of the great carriers that are to be affected by this measure, in respect to providing what I regarded as an essential provision—the insertion of a court review.

I instructed one of my clerks to put the manuscript together. He had a short time before been in consultation with the secretary of the Interstate Commerce Commission upon some little details of this bill, and from the secretary of the Interstate Commerce Commission he had received the suggestion that the words "in its judgment" ought to go into the section of the bill which I was preparing. That never came under my eye until this bill was printed and read in the Senate, and I would have corrected it then, except that I had limited the purpose for which I had presented the bill, as I have already explained to the Senate, to throwing light solely upon the question of court review. So, without saying whether I believe they should or should not be inserted in the bill, I want it emphatically understood that if any harm comes to this bill by reason of their presence I must not be held accountable because of anything I have said heretofore.

Mr. President, that seems to make it essential for me to say what I think about the insertion of those words in the bill. I could not stop at this point and be entirely frank with the Senate nor fair to myself. I do not see that they perform any useful function at all. If they mean anything at all, they endanger and jeopardize the bill. If this legislation is going to be sustained in the Supreme Court, in my opinion it is going to be sustained upon the proposition that this is not a delegation of legislative power to the Commission, but that it is the enactment of a rule, with power conferred upon the Commission to apply it to particular cases as they arise.

The Supreme Court has stated time and time again, and has stated very recently, that when you undertake to delegate legislative power to an administrative body you undertake to do that which you have no power under the Constitution to do; and it seems to me it would be flying in the face of that decision and inviting disaster to write into this bill the very thing the Supreme Court has indicated we can not lawfully insert in it.

Mr. DOLLIVER. Before the Senator from Pennsylvania resumes his seat, I will ask him whether he does not recognize the fact that such a criticism as he has just made is not removed by the elimination of the words "in its judgment," but that it inheres in the whole sentence, "shall determine and prescribe what will be a just rate."

Mr. KNOX. In reply I will state that I do not think the broad question of power is free from doubt. I have indicated to the Senate that, in my judgment, Congress possesses the power to enact a rule and delegate the application of that rule to an administrative body. But it is a close question, and you are treading too close to the other side when you weigh this bill down with words which would seem to me to indicate that legislative discretion is intended to go with the conference of this power.

Mr. TILLMAN. Will the Senator from Pennsylvania answer me a question before he sits down? Does the Senator consider that if these words are left in, the breadth of the court review is at all narrowed? Has not the court the same power, and will it not exercise the same power without them as it would with them?

Mr. KNOX. I do not see how it affects the court review provision at all.

Mr. TILLMAN. That is what I wanted to know.

Mr. BAILEY. Mr. President, the Senator from Iowa [Mr. DOLLIVER], referring to an amendment which I offered to the bill, tells the Senate, I understand, that the amendment which I offered was as broad as it could be made. Did I understand the Senator correctly?

Mr. DOLLIVER. I said that the jurisdiction conferred upon the court was conferred in exactly the same language as the jurisdiction conferred upon the Commission, and without saying whether it was broad or narrow I said that the court could exercise over the order of the Commission exactly the same jurisdiction that the Commission exercised over the railroad rate.

Mr. BAILEY. Mr. President, the Senator from Iowa loses sight of the fact that under no form of language which can be devised will it ever be possible to prevent the courts from determining whether a given rate affords the carrier a just compensation for its service.

The Senator from Iowa also overlooks the fact that my amendment imposed upon the carrier the necessity of proving a negative in the court—a negative, it is true, which was susceptible of proof; and yet a negative is always difficult to prove. Under the amendment which I offered no order of the Commission establishing a rate could ever be set aside until the carrier had established to the satisfaction of the court that the rate afforded less than a just compensation for the service.

I would like for the Senator from Iowa to tell the Senate if he thinks that under the language of this bill the court can be prevented from condemning a rate which affords the carrier less than a just compensation for its service.

Mr. DOLLIVER. Mr. President, I think that under this bill the court will deal only with the order of the Commission. I believe that to be the intention.

Mr. BAILEY. But what is the order? The order establishes a rate. Does the Senator mean that the court can not inquire into the justice and reasonableness of the rate?

Mr. DOLLIVER. Mr. President, I think that the court will inquire into the whole question, but will not disturb the order of the Commission unless it finds that the rate fixed is so unjust and so unreasonable as to be a violation of property rights in a constitutional sense.

Mr. BAILEY. That is very general, and everybody will agree to it. Certainly I would not disagree with it. But what are the property rights guaranteed by the Constitution? Let us be a little more definite. The one property right guaranteed by the Constitution which relates to this question is that the carrier shall not be compelled to render a service without the shipper

pays a just compensation. I provided that the carrier might go into the court, might allege that the rate was not a just compensation, and when the carrier had demonstrated to the satisfaction of the court that the rate was not a just compensation for the service, then the court could enjoin it. Neither the Senator from Iowa nor any Senator in this body will contend that under such a state of facts it is within the power of Congress to prevent the court from condemning such a rate.

Mr. DOLLIVER. Mr. President——

The PRESIDENT pro tempore. Does the Senator from Texas yield to the Senator from Iowa?

Mr. BAILEY. Certainly.

Mr. DOLLIVER. Does the honorable Senator from Texas contend that he gave any other jurisdiction than that to the Commission?

Mr. BAILEY. Absolutely none as to the rate. The only other jurisdiction which I gave to the court was over practices and regulations—and, mark you, that in a large degree was copied word for word from this bill itself—the only difference between the regulations and practices for which I provided was that they should be "just and reasonable," whereas the Hepburn bill provided that they should be "just, fair, and reasonable."

Mr. DOLLIVER. But, Mr. President, the honorable Senator omitted from the word "what," in line 19, on page 10, everything down to and including the word "prescribed."

Mr. BAILEY. Yes.

Mr. DOLLIVER. So that the authority which he gave the Commission was to prescribe a rate or charge which shall afford a just compensation to the carrier. Then in his next amendment, as I understand it, he provided that the carrier complaining of the order could go into the court alleging that such a rate or charge will not afford just compensation for the service or services to be performed, and that the court should hear that question; and my notion was that he passed over to the court the exact question which had been within the jurisdiction of the Commission. I got at that solely because it seemed to be in the same language.

Mr. BAILEY. Mr. President, the Senator forgets that the Commission establishes the rates with the best lights before it. When those rates are once established by the Commission, under my amendment the carrier had to affirmatively show to the court that they denied to it a just compensation for the service. Not only so, but while the Commission was not limited by the ordinary rules of evidence, when you reached the court it was limited; and therefore it required an incomparably stronger case in the court to condemn an order of the Commission than it could ever have required in the Commission to establish the order. Now, what the Senator has in his mind is that I omitted the words "in its judgment."

Mr. DOLLIVER. And the words "shall determine and prescribe."

Mr. BAILEY. I think I used the words "shall determine and prescribe," but whether I did or not, the Senator forgets that in addition to the authority to the Commission I sought to avoid the very doubtful question which the Senator from Pennsylvania [Mr. KNOX] says exists—the question as to the power of Congress to delegate to the Commission the right to fix the rate; and I went further, after charging the Commission, an administrative body, with the power to establish and prescribe the rate, I provided that the rate when so established and prescribed should thereafter be the only lawful rate. So that the carrier, coming into the court to attack the rate which they were required to charge, attacked not the Commission's rate, but the rate established by Congress upon the ascertainment of the Commission. I am by no means sure that I escape the difficulty, if difficulty there be, even in that way, but it is certain if that difficulty can be escaped I thus escaped it.

My own opinion is that the words "in its judgment" either mean nothing or they are fatal to this bill. It is my opinion that the very purpose for which they are inserted here, if considered by the court to be their object, will invalidate this section of the act. The purpose for which they were inserted was to prevent the court from saying whether this was a just and reasonable rate. If the Supreme Court of the United States shall determine that these words were inserted in the bill for the purpose of denying to the judiciary the right and power to examine into the justice of the rate, they will hold this section unconstitutional, precisely as they held the Minnesota law unconstitutional.

In that case the supreme court of Minnesota declared that the purpose of the legislature, plainly manifested in the act itself, was to make the rates established by the commission conclusive and final and to prevent a judicial inquiry into their justice or reasonableness. The Supreme Court of the United States, accepting the construction placed upon the Minnesota act by the supreme court of that State, said that a law which denied the carrier the right to inquire into the justice and the reasonableness of the rate deprived it of its property without the due process of law, and therefore was null and void; and they will hold this law to be null and void if they are compelled to hold that it was the purpose of Congress to place the order of the Commission beyond judicial investigation.

I omitted those words for the additional reason that they seemed to me plainly and expressly to import a delegation of legislative power. The Senator from Iowa knows as well as I do that there are numerous cases in the States where the enactments of State legislatures have been held void because they contained these very words in one case and very similar words in other cases. With a grave doubt, and that doubt made graver by recent intimation of the Supreme Court in the Northern Securities case, I thought it wise to guard against every danger. Until the decision in the Northern Securities case in which the court expressly declared that it had never decided the question as to the power of Congress to fix railroad rates, I had been in the habit of accepting it as reasonably well established that we could create a commission and through it regulate railroad rates.

In case after case coming up from the various States the court had employed language that seemed to place that power of Congress beyond the realm of doubt, and yet, when in the Northern Securities Company's case it was urged that if the Federal Government saw fit it could protect the public against such combinations for prescribing railroad charges, the learned justice who delivered the opinion, answered that argument by saying that the court had never yet decided that Congress possesses the power to prescribe railroad rates and fares.

In a still more recent case it seems to me there was a direct and distinct intimation that legislative power could not be delegated in this way, and we are thus admonished that every safeguard should be thrown around this law and every dangerous word and phrase should be eliminated from it.

I feared that if the words "in their judgment" mean anything they are full of danger, and if they are not dangerous then they are meaningless, and for that reason I left them out of the amendment which I drew.

Mr. President, I regret that the court did not adhere to the old doctrine first laid down in Munn *v.* The State of Illinois, that the fixing of a rate was a legislative function, and that the appeal was to the ballot box and not to the court, because I believe as firmly as I do in my own existence that the right kind of a commission is better qualified to establish a just and reasonable rate than any court ever yet organized or any court which ever will be organized in the history of this Republic. I therefore do not feel that it would either be dangerous or unjust to the railroads to commit that question to the Commission without judicial review.

But in case after case the court has kept receding from the doctrine of Munn *v.* The State of Illinois until in one of the latest cases, reported in 176, the justice who delivered that opinion said the idea that these rates can be fixed and judicial examination excluded can not be tolerated. Every time they have spoken on the subject in the last twenty years they have increased the emphasis with which they have asserted the right and duty of the courts to inquire into the justice and the reasonableness of the rates.

If it should happen that we put useless and fatal words into the body of this act and thus destroy it, no man can foresee the result. What are called the "conservative" Senators are just as anxious to pass a constitutional bill as we are. I believe that even the railroads themselves want to make this bill constitutional, because they realize that this is probably the mildest bill that any Congress will ever pass again; and they apprehend that if this act should be declared invalid and a new appeal taken to the country upon this question a more drastic law would be the consequence. Therefore, the railroads themselves want this law made valid.

As for my part, I want it made valid not only because it is our duty to make it so, but also because I fear that if the Supreme Court should hold it unconstitutional the people would lose hope and interest, and all effort at restraining the avarice of the common carriers would be abandoned. I remember how it happened with the income tax. If I had been told before the Supreme Court condemned that law that the people would accept that decision patiently and would make no effort, either in the way of a constitutional amendment or otherwise, to escape from it, I would have told the man who said it that he little understood the temper of the American people. Yet when, in our platform, we ventured to complain in respectful language against that decision the country condemned us for criticising it instead

of the court for making it, and the demand for an income tax, just and wise as I know it to be, has passed from our political discussions.

I fear that if a similar fate should overtake this law in the court a similar fate would overtake it in the great forum of the people, and therefore I beseech its friends to take no chance of making it invalid.

Mr. FORAKER. Mr. President, I had nothing to do with putting these words ["in its judgment"] in this bill, but I have heard reasons assigned for their presence here. There were two general reasons assigned, neither one of them good, in my opinion. The first reason assigned was that spoken of by the Senator from Iowa [Mr. DOLLIVER], when he said the purpose was to make it clear—I am not trying to quote his exact language—that the Commission was to determine, according to its discretion, what the rate should be that they would prescribe to take the place of the rate that was condemned. The other reason the Senator from Iowa did not mention, but it was given to me as a reason, aside from that which he did mention, for the presence in the bill of these words. It was in the minds of the men who put these words in the bill, as I was told, that they were trying to follow the rule laid down in the case of Field against Clark.

Now, how unlike this is to that case will occur to every Senator the minute I cite it. In that case the President was to ascertain a certain state of facts, and when he ascertained a certain state of facts to exist, he was to issue his proclamation, which the Supreme Court held was merely an administrative act, and when he had performed that administrative act the legislation of Congress, conditioned upon the performance of that admistrative act by the President, was to go into effect.

It was said by gentlemen who explained this provision to me that they were not giving to the Commission the power to make rates in the absolute sense in which the Senator from Texas provided in his bill, but they were giving to the Commission power to exercise a discretion to examine into the matter, to reach a conclusion, to make an announcement, to put it in the form of an order, and then, by operation of law now and here made, the Congress was to adopt that administrative act of the Commission, and the law was then to go into effect, according to the discretion so named by the Commission, as a rate made by Congress and not by the Commission.

I say neither one of these reasons seemed to me to be sound. Speaking of the last one first, it does not make any difference that the language is expressed in the form in which I find it, for, as I said here, speaking on this point on a previous occasion, it is but a mere juggle of words, and the Supreme Court or any other court coming to interpret this language will look through the jugglery to see what it is in fact that the Commission is authorized to do.

The court will find that, in the first place, whether these words be in or be out of this statute, the Commission is to exercise discretion, is to exercise judgment, is to name a rate, and that the rate so named by the Commission, as the result of its investigations and the exercise of its judgment and discretion, is to go into effect and be the rate that is to control as the maximum rate. In other words, Mr. President, the purpose of this law is, and will remain, whether these words stay in or go out, to give to the Commission the power to name a maximum rate. Now, I say it does not make any difference whether you say "in its judgment" or not, so far as the legal effect is concerned; for the fact will remain that it is the Commission not only making the rate, but making it in the exercise of its judgment and discretion.

Mr. CLAPP. If the Senator will pardon me a moment, I wish to make a suggestion; but I wish that some older Senator would make it.

It is the experience of Senators every afternoon when we get along to this hour—nearly 6 o'clock—that it is impossible to get the attention that ought to be given during the discussion of a subject of this kind; and it does seem to me that it would be better, with this important matter before us, to take an adjournment now until to-morrow morning.

Mr. FORAKER. I should like to go on, if the Senator does not object.

Mr. CLAPP. Would the Senator not rather go on in the morning, when there will be a full attendance of Senators to listen to the discussion?

Mr. FORAKER. Very well; but I want to be considered as holding the floor.

Mr. GALLINGER (to Mr. CLAPP). Move to adjourn.

Mr. CLAPP. I move that the Senate do now adjourn until 11 o'clock to-morrow morning.

Mr. TILLMAN. I hope the Senator will not do that. Every man here wants, and I particularly want, to get this bill through. I want to get to a vote; and I think we can soon get to the point when we can dispose of all the amendments and order a reprint of the bill, and to-morrow we can vote on it finally. So I hope the Senator from Minnesota will withhold his motion.

Mr. CLAPP. I withdraw it; but in a matter of this importance, which we have been considering for months and months, and upon which we want, above everything else, to be right, if we can be right in the settlement of this question, it does seem to me wise, in the closing hours of a long day's session of the Senate, that we should not try to settle the pending question.

Mr. FORAKER. I can say all I want to say in three minutes, if I may be permitted to do so. I was almost through.

Mr. CLAPP. I withdraw the motion.

Mr. FORAKER. Mr. President, I had reached the point where I wanted to say that it does not, in my judgment, make any difference in legal effect whether these words remain in or out of the bill, except only in this sense: With the words remaining in the bill it will be as though we had written across the face of it: "This bill is unconstitutional and we expect it so to be held." That is what they mean in legal effect if they stay there. I have pointed this out very frequently and I have dwelt on it so elaborately on so many different occasions that I do not want to go into the argument again.

It means that, Mr. President, for the reason that all concede we can not delegate legislative power. Now, what is legislative power except only for us to give to somebody else the exercise of a discretion that we ourselves are charged with the duty of exercising? Who is it that is to determine what is just and reasonable? The Commission, according to this bill; but what, Mr. President, is the power that Congress has in the making of rates, assuming now, for the sake of the argument, that it has power to fix rates, which I do not admit; but, assuming that Congress has the power to make rates, what is the power of Congress? It is the power to fix a rate that is just and reasonable. We can not make any other rate; and if we confer upon the Commission the power to make a just and reasonable rate, we not only confer a legislative power, but we divest ourselves in favor of the Commisison of every particle of legislative power we have with respect to the subject. For the Commission to make a just and reasonable rate is for the Commission to do all that Congress can do.

Mr. FULTON. Mr. President——

The PRESIDENT pro tempore. Does the Senator from Ohio yield to the Senator from Oregon?

Mr. FORAKER. I do.

Mr. FULTON. I ask the Senator if he does not concede that if Congress has the power to prescribe rates and may vest it in the Commission, or effect it through the Commission. then the retention of these words would not affect the validity of the bill?

Mr. FORAKER. My attention was diverted for a minute. I did not catch what the Senator said.

Mr. FULTON. Does the Senator think that the retention of these words in the bill will affect its validity, if it shall be held that Congress has the power to prescribe rates through the Commission?

Mr. FORAKER. That is just what I am saying. It does not make a bit of difference, except only that the courts will not need to go beyond the language of the bill if the words stay in.

What is it to delegate legislative power? It is to give to somebody else the exercise of legislative discretion. The legislative discretion in question is to fix a just and reasonable rate. If we say we will not do that, but we will create an agency to do that very thing and invest it with power to exercise its judgment and discretion, we have delegated the very power that we ourselves have.

I will say with these words in the bill it is a perfectly plain case. No court in this country, in my judgment, will hesitate to say that those words make this law unconstitutional without going beyond it to reason about it; but if you strike them out, the court will of necessity, in my judgment, reach precisely the same conclusion, because then the court will say "What is it the Commission is to do? It is to prescribe a rate." "Prescribe" is a legislative word; it indicates legislative action. What kind of a legislative rate is it to make? One that is just and reasonable. How can it make a just and reasonable rate, except only by exercising precisely the discretion and judgment that Congress itself would have to exercise if it undertook to make a just and reasonable rate?

So I say, Mr. President, in my opinion it does not make any difference, as to the validity of this bill, whether we strike these

words out or leave them in; but I am in favor of striking them out, because to leave them in is, as I said a while ago, as though we were to write across the face of the act, "This act is unconstitutional."

Mr. CULLOM. Does the Senator regard it as unconstitutional?

Mr. FORAKER. I do. I regard this proposed law as unconstitutional, and I do not believe you can help it. Mr. President, you can not now "make a silk purse out of a sow's ear" any more than you could when that utterance was first made.

The trouble with this bill is that it is fundamentally wrong, in my opinion. The Government has no power, in my opinion, acting through Congress, to make these rates. I have dwelt upon that heretofore, and the Senator from Texas has called attention in a most impressive way to what was said by the Supreme Court in one of its latest utterances, in the Northern Securities case.

In the second place, conceding that we have the power, it is agreed upon all sides that we can not delegate that power. What is the power that we have? It is the power to make just and reasonable rates. If we say we will not make them, but we will appoint somebody else to do it, we are abdicating our authority in that respect and undertaking to give that somebody else that authority; and that, I think, is fatal to this bill, because it is not like the case that has been supposed where a definite standard has been created. To say you shall make a just and reasonable rate is not a definite standard, for whoever undertakes to make a just and reasonable rate can not make it by a mathematical calculation. You have got to do it by the exercise of discretion, and it is legislative discretion; and that is what I think will kill this bill, if nothing else does.

Mr. TILLMAN. I move that when the Senate adjourns to-day it be to meet at 11 o'clock to-morrow morning.

The PRESIDENT pro tempore. The question is on the motion of the Senator from South Carolina.

The motion was agreed to.

Mr. TILLMAN. I now ask that the bill be reprinted with the amendments which have been incorporated into it up to the stage we have reached.

The PRESIDENT pro tempore. The question is on the motion of the Senator from South Carolina that the bill be ordered to be reprinted with the amendments which have been incorporated into it.

The motion was agreed to.

Mr. HALE. Mr. President, I should like very much to see the Senate come to a vote on the the amendments; but it is evidently impossible to do so to-night, and therefore I move that the Senate do now adjourn.

The motion was agreed to; and (at 5 o'clock and 30 minutes p. m.) the Senate adjourned until to-morrow, Friday, May 18, 1906, at 11 o'clock a. m.

HOUSE OF REPRESENTATIVES.

THURSDAY, *May 17, 1906.*

The House met at 12 o'clock noon.

Prayer by the Chaplain, Rev. HENRY N. COUDEN, D. D.

The Journal of the proceedings of yesterday was read.

Mr. PAYNE. Mr. Speaker, I move that the Journal be approved.

The motion was agreed to.

FOREIGN-BUILT DREDGES.

Mr. GROSVENOR. Mr. Speaker, I call up the conference report on the bill H. R. 395, concerning foreign-built dredges.

The Clerk read the report and statement, as follows:

CONFERENCE REPORT.

The committee on conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill H. R. 395, concerning foreign-built dredges, having met, after full and free conference have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same.

C. H. GROSVENOR,
E. S. MINOR,
THOS. SPIGHT,
Conferees on the part of the House.

WM. P. FRYE,
J. H. GALLINGER,
JAMES H. BERRY,
Conferees on the part of the Senate.

STATEMENT.

The difference between the bill as it passed the House and the bill as it passed the Senate is an amendment offered by the Senate exempting from the operation of the first section of the bill certain dredges now engaged in the work of the Galveston Harbor.

The Senate added to the list of names one called the "Sea Lion," and the House disagreed to that amendment.

C. H. GROSVENOR,
E. S. MINOR,
Managers on the part of the House.

Mr. SULZER. Mr. Speaker, I would like to have some explanation of this conference report.

Mr. GROSVENOR. The contract for the building of the harbor at Galveston was made with a corporation that brought into the United States four steam dredges. Having progressed somewhat upon the line of their work they found it necessary to build in Europe and bring over another dredge which was named the "*Texas*." That dredge was a special dredge, of a special size, intended for a special work of projecting the material far up into the city in the process of building up where it was desired. The *Texas* was destroyed on the way over and the *Sea Lion* was contracted for to take the place of the *Texas*.

Now, this bill proposes that hereafter foreign-built dredges shall come under the regular laws of the United States in regard to foreign-built ships, but inasmuch as this contract for the work in Galveston was made when no such law existed, the committee is of the opinion that the dredges already here ought to be exempt, and then comes the question of the *Sea Lion*, which is not yet completed and is shortly to be brought over.

There is no existing dredge, as it is represented to us, that can do the particular work that this dredge is intended to do, and the committee of the city of Galveston represents to the committee that if that dredge should be forbidden to come here, it would suspend the work of construction at Galveston Harbor perhaps a year and a half. Now, the proposition is that these particular dredges may be documented in the United States, and that hereafter all dredges shall be treated as other foreign ships are treated.

Mr. SULZER. Then I understand that if this bill becomes a law these dredges can be used at Galveston, and afterwards at any other port in the United States.

Mr. GROSVENOR. Such are the terms of the bill. It directs that they may be documented, which means to give them a register.

Mr. STEPHENS of Texas. As I understand the gentleman, the *Sea Lion* was built especially for work at Galveston?

Mr. GROSVENOR. Built especially for that work; and the representation to us is that unless they have that dredge they can not do the work, and they would be delayed in the construction of another one perhaps a year and a half.

Mr. STEPHENS of Texas. I desire to state that that is correct, and I hope that there will be no opposition to this conference report.

Mr. GROSVENOR. Strongly as the members of the committee would oppose, ordinarily, the bringing of foreign-built vessels into the country to be documented, yet the circumstances and conditions at Galveston seem to us to demand it in this case.

Mr. SULZER. Where were these dredges built abroad?

Mr. GROSVENOR. I do not know.

Mr. SULZER. How much are they worth?

Mr. GROSVENOR. I do not know that.

Mr. SULZER. This bill would permit four or five of them to come in and receive American registry or documenting?

Mr. GROSVENOR. Four are here now, and are pretty well worn out. It will only permit one other to come in.

Mr. LOUDENSLAGER. What portion of the bill prevents the future bringing in of other dredges?

Mr. GROSVENOR. The whole bill does.

Mr. LOUDENSLAGER. What part of it?

Mr. GROSVENOR. And more than that, it forfeits such dredge to the United States.

Mr. MUDD. Has this bill any relation to the awarding of future contracts?

Mr. GROSVENOR. None whatever. Here is the first section of the bill, which says that foreign-built dredges shall not, under a penalty of forfeiture, engage in dredging in the United States unless documented as a vessel of the United States.

Mr. LOUDENSLAGER. What was the Senate amendment?

Mr. GROSVENOR. Our bill provided that this act should not apply to any foreign-built dredges now at work in the waters of the United States. The Senate—and wisely—feel-

ing that there might be other foreign-built dredges somewhere at work, named these dredges so as to confine the operation of the law to the particular dredges named.

Mr. LOUDENSLAGER. And the Senate amendment authorizes the documenting of these foreign-built dredges by the Commissioner of Navigation?

Mr. GROSVENOR. Yes.

Mr. PERKINS. Let me ask the gentleman if this provision is a reenactment of the present law or a new provision?

Mr. GROSVENOR. A new provision. The law did not cover dredges. The gentleman will understand that these dredges had already been at work and that the law at that time permitted them to bring such dredges here, so that there seemed to be a great injustice in striking a blow at them after they had made this contract and were at work under the contract.

Mr. OTJEN. Mr. Speaker, I would like to ask the gentleman a question. Why should not those dredges be then confined to the work at Galveston?

Mr. SULZER. That is the point.

Mr. GROSVENOR. They are not confined to the work at Galveston.

Mr. OTJEN. According to this bill that the gentleman proposes to pass they will be permitted to work anywhere in the United States.

Mr. GROSVENOR. After they are through with the work down there.

Mr. OTJEN. Would it not be right to confine them to the contract at Galveston?

Mr. GROSVENOR. Oh, it would be a rather hard provision. The Senate concluded not to do that, and the House concluded to concur. It would be a rather hard provision. They are being worn out and will probably be about destroyed by the time the work is done. Mr. Speaker, if no other question is asked, I shall ask for a vote.

Mr. SULZER. Mr. Speaker, I wish to call attention——

The SPEAKER. Does the gentleman yield?

Mr. SULZER. Mr. Speaker, I would like to have a few minutes.

Mr. GROSVENOR. Why, the gentleman does not want to oppose this, does he?

Mr. SULZER. Yes; I am going to oppose this kind of a conference report, and point out some inconsistencies in this special kind of peculiar legislation.

Mr. GROSVENOR. Very well.

The SPEAKER. Does the gentleman yield?

Mr. GROSVENOR. Mr. Speaker, I demand the previous question on the conference report.

Mr. SULZER. Mr. Speaker, I hope the previous question will be voted down.

The SPEAKER. The question is on ordering the previous question on the conference report.

The question was taken; and on a division (demanded by Mr. SULZER) there were—ayes 161, noes 32.

Mr. SULZER. Mr. Speaker, I demand the yeas and nays.

The SPEAKER. The gentleman demands the yeas and nays. As many as favor ordering the yeas and nays will rise and stand until counted. [After counting.] Two gentlemen have voted—not a sufficient number—and the yeas and nays are refused.

So the previous question was ordered.

The SPEAKER. The question now is on agreeing to the conference report.

The question was taken; and the conference report was agreed to.

MESSAGE FROM THE PRESIDENT OF THE UNITED STATES.

A message, in writing, from the President of the United States was communicated to the House of Representatives, by Mr. BARNES, one of his secretaries, who also informed the House of Representatives that the President had approved and signed bills and joint resolution of the following titles:

On May 16, 1906:

H. R. 6101. An act for the relief of the estate of Charles M. Demarest, deceased;

H. J. Res. 134. Joint resolution authorizing the construction and maintenance of wharves, piers, and other structures in Lake Michigan, adjoining certain lands in Lake County, Ind.;

H. R. 13946. An act for the relief of Charles L. Allen;

H. R. 15095. An act authorizing the condemnation of lands or easements needed in connection with works of river and harbor improvement at the expense of persons, companies, or corporations; and

H. R. 18204. An act to authorize the Northampton and Halifax Bridge Company to construct a bridge across Roanoke River at or near Weldon, N. C.

CORPS OF DENTAL SURGEONS.

Mr. HULL. Mr. Speaker, the Committee on Military Affairs reported the bill (S. 2355) to reorganize the corps of dental surgeons attached to the Medical Department of the Army, with certain amendments. The Clerk in having it printed made an error in section 4, and printed that section as though it were not an amendment. I ask unanimous consent for a reprint of the bill in accordance with the report of the committee.

The SPEAKER. Is there objection to the request of the gentleman from Iowa?

Mr. WILLIAMS. Mr. Speaker, this is merely the correction of a clerical error, and I shall make no objection.

The SPEAKER. The Chair hears no objection, and it is so ordered.

NAVAL APPROPRIATION BILL.

The SPEAKER. The previous question has been ordered on the naval appropriation bill.

Mr. WILLIAMS. Mr. Speaker, on yesterday I demanded a separate vote upon each amendment. I wish this morning to withdraw that demand, except upon the amendment offered by the gentleman from California [Mr. HAYES] to give a preference of 4 per cent to the Pacific slope ship building.

The SPEAKER. Is a separate vote demanded on any other amendment?

Mr. NEEDHAM. Mr. Speaker, I make the point of order that the gentleman from Mississippi [Mr. WILLIAMS] is too late with his demand for a separate vote on the amendment referred to, inasmuch as the record shows that a motion to adjourn intervened after the demand for a separate vote.

The SPEAKER. The motion to adjourn is in order at any time. In the opinion of the Chair the point of order is not well taken. The taking of a vote on amendments in gross must be by unanimous consent. It is an irregular procedure. Ordinarily, in fact, without unanimous consent, a vote would have to be taken upon all amendments separately, but the practice has grown up and has resulted in much saving of time and great convenience to the House, and if no separate vote is demanded, then a vote in gross is usually taken. But as consent never was given to take the vote in gross in this case, it seems to the Chair that the demand is in time and the Chair therefore, overrules the point of order.

Mr. ROBERTS. Mr. Speaker, I desire to know if it is understood that there is to be a separate vote on the amendment on page 15?

The SPEAKER. The Chair understands that separate votes have been demanded on two amendments by the gentleman from Mississippi and by the gentleman from Massachusetts. Is there objection to taking the vote upon the remaining amendments in gross? [After a pause.] The Chair hears none. The question is on agreeing to the amendments indicated.

The question was taken; and the amendments were agreed to.

Mr. ROBERTS. Mr. Speaker, the amendment I have in mind, upon which I demand a separate vote, is the amendment which provides for the purchase of anchors, cables, chains, and so forth, in the open market, which I think was offered by the gentleman from Ohio [Mr. GROSVENOR] in the name of the gentleman from Michigan [Mr. LOUD].

Mr. GROSVENOR. It was presented by the gentleman from Michigan in the name of the gentleman from Ohio.

The SPEAKER. No separate vote has been reserved, so far as the Chair recollects, upon this subject, except upon the so-called Grosvenor amendment.

Mr. ROBERTS. Mr. Speaker, that is what I have in mind.

The SPEAKER. The Clerk will report the amendment.

The Clerk read as follows:

Page 16, line 6, after the word "dollars," insert: "*Provided*, That after January 1, 1907, no part of said sum shall be expended in the manufacturing in any Government navy-yard of any chains, anchors, or cordage which can be obtained in the free markets of the country at less cost than manufacture of the same article will cost in the navy-yards, by bids at the solicitation of the Department or in such manner as the Department may choose: *And provided further*, That all such articles shall be of standard and quality to be fixed by the Navy Department."

Mr. ROBERTS. Mr. Speaker, to save time I demand the yeas and nays on the amendment.

The yeas and nays were ordered.

The question was taken; and there were—yeas 119, nays 129, answered "present" 19, not voting 114, as follows:

YEAS—119.

Acheson	Bates	Burke, Pa.	Cooper, Pa.
Adams, Pa.	Bede	Burton, Ohio	Cromer
Adams, Wis.	Bennett, Ky.	Butler, Pa.	Crumpacker
Alexander	Birdsall	Calderhead	Curtis
Allen, Me.	Bishop	Campbell, Kans.	Dale
Bannon	Boutell	Campbell, Ohio	Dalzell
Barchfeld	Brick	Chaney	Darragh
Bartholdt	Buckman	Cole	Davis, Minn.

Dawes	Hepburn	McCreary, Pa.	Smith, Iowa
Deemer	Hermann	McGavin	Smith, Samuel W.
Denby	Higgins	McKinlay, Cal.	Smith, Pa.
Dickson, Ill.	Hill, Conn.	McKinley, Ill.	Smyser
Dixon, Mont.	Hinshaw	Mann	Snapp
Draper	Howell, N. J.	Marshall	Southwick
Dwight	Howell, Utah	Miller	Sperry
Edwards	Hughes	Moon, Pa.	Stafford
Esch	Hull	Mouser	Stevens, Minn.
Foster, Ind.	Kahn	Murdock	Tawney
Gardner, Mich.	Keifer	Needham	Taylor, Ohio
Gardner, N. J.	Kennedy, Nebr.	Nevin	Thomas, Ohio
Gilbert, Ind.	Kinkaid	Norris	Townsend
Gilbert, Ky.	Lacey	Olmsted	Tyndall
Gillett, Cal.	Landis, Chas. B.	Payne	Volstead
Graff	Le Fevre	Perkins	Vreeland
Graham	Lilley, Pa.	Pollard	Wanger
Grosvenor	Littauer	Rives	Wilson
Hale	Longworth	Samuel	Wood, N. J.
Hamilton	Loud	Scott	Woodyard
Hayes	Loudenslager	Sherman	Young
Hedge	McCleary, Minn.	Smith, Cal.	

NAYS—129.

Adamson	Floyd	Knowland	Roberts
Aiken	French	Lamb	Robertson, La.
Ames	Fulkerson	Landis, Frederick	Robinson, Ark.
Bankhead	Gardner, Mass.	Law	Rucker
Bartlett	Garner	Lawrence	Russell
Beall, Tex.	Garrett	Lee	Ryan
Bennet, N. Y.	Gill	Lester	Shackleford
Bonynge	Gillespie	Lever	Sherley
Bowers	Gillett, Mass.	Lewis	Slayden
Bowie	Glass	Lindsay	Smith, Md.
Brantley	Goldfogle	Littlefield	Smith, Tex.
Broocks, Tex.	Granger	Livingston	Spight
Brownlow	Greene	Lloyd	Stanley
Brundidge	Gregg	McCarthy	Stephens, Tex.
Burgess	Griggs	McKinney	Sterling
Burleson	Hardwick	McLachlan	Sullivan, Mass.
Burnett	Haskins	McNary	Sulloway
Calder	Heflin	Macon	Sulzer
Candler	Henry, Conn.	Maynard	Talbott
Capron	Henry, Tex.	Moon, Tenn.	Taylor, Ala.
Clark, Fla.	Hoar	Mudd	Thomas, N. C.
Clark, Mo.	Holliday	Murphy	Tirrell
Clayton	Houston	Page	Towne
Cocks	Howard	Parker	Underwood
Cooper, Wis.	Hubbard	Patterson, N. C.	Waldo
Currier	Humphrey, Wash.	Patterson, S. C.	Wallace
Cushman	Hunt	Pujo	Webb
Dawson	Johnson	Randell, Tex.	Weeks
De Armond	Jones, Va.	Reeder	Williams
Dixon, Ind.	Jones, Wash.	Rhinock	Zenor
Dunwell	Keliher	Rhodes	
Ellerbe	Kitchin, Wm. W.	Richardson, Ala.	
Fitzgerald	Kline	Rixey	

ANSWERED "PRESENT"—19.

Bell, Ga.	Davey, La.	Goulden	Otjen
Burton, Del.	Flood	Hay	Reid
Chapman	Foster, Vt.	Humphreys, Miss.	Watkins
Conner	Fuller	Jenkins	Wood, Mo.
Cousins	Gaines, W. Va.	Meyer	

NOT VOTING—114.

Allen, N. J.	Foss	McDermott	Shartel
Andrus	Fowler	McLain	Sheppard
Babcock	Gaines, Tenn.	McMorran	Sibley
Beidler	Garber	Madden	Sims
Bingham	Goebel	Mahon	Slemp
Blackburn	Gronna	Martin	Small
Bowersock	Gudger	Michalek	Smith, Ill.
Bradley	Haugen	Minor	Smith, Ky.
Brooks, Colo.	Hearst	Mondell	Smith, Wm. Alden
Broussard	Hill, Miss.	Moore	Southall
Brown	Hitt	Morrell	Southard
Burke, S. Dak.	Hogg	Olcott	Sparkman
Burleigh	Hopkins	Overstreet	Steenerson
Butler, Tenn.	Huff	Padgett	Sullivan, N. Y.
Byrd	James	Palmer	Trimble
Cassel	Kennedy, Ohio	Parsons	Van Duzer
Cockran	Ketcham	Patterson, Tenn.	Van Winkle
Davidson	Kitchin, Claude	Pearre	Wachter
Davis, W. Va.	Klepper	Pou	Wadsworth
Dovener	Knapp	Powers	Watson
Dresser	Knopf	Prince	Webber
Driscoll	Lafean	Rainey	Weems
Ellis	Lamar	Ransdell, La.	Weisse
Fassett	Legare	Reynolds	Welborn
Field	Lilley, Conn.	Richardson, Ky.	Wharton
Finley	Little	Rodenberg	Wiley, Ala.
Flack	Lorimer	Ruppert	Wiley, N. J.
Fletcher	Lovering	Schneebeli	
Fordney	McCall	Scroggy	

So the amendment was rejected.

The Clerk announced the following pairs:

For the vote:

Mr. BROOKS of Colorado with Mr. BYRD.

Mr. CONNER with Mr. SULLIVAN of New York.

Mr. MINOR with Mr. LOVERING.

Mr. PEARRE with Mr. HAY.

For the day:

Mr. ANDRUS with Mr. RUPPERT.

Mr. COUSINS with Mr. WILEY of Alabama.

Mr. DAVIDSON with Mr. FLOOD.

Mr. BABCOCK with Mr. COCKRAN.

Mr. BINGHAM with Mr. HEARST.

Mr. BLACKBURN with Mr. SMALL.

Mr. BURTON of Delaware with Mr. BELL of Georgia.

Mr. CASSEL with Mr. BUTLER of Tennessee.

Mr. FASSETT with Mr. SIMS.

Mr. KETCHAM with Mr. RAINEY.

Mr. KENNEDY of Ohio with Mr. FIELD.

Mr. KNAPP with Mr. LAMAR.

Mr. LAFEAN with Mr. FINLEY.

Mr. LORIMER with Mr. HUMPHREYS of Mississippi.

Mr. OLCOTT with Mr. MCLAIN.

Mr. OVERSTREET with Mr. TRIMBLE.

Mr. RODENBERG with Mr. DAVIS of West Virginia.

Mr. PARSONS with Mr. MOORE.

Mr. PRINCE with Mr. SOUTHALL.

Mr. SIBLEY with Mr. WATKINS.

Mr. SOUTHARD with Mr. JAMES.

Mr. WACHTER with Mr. HILL of Mississippi.

Mr. WADSWORTH with Mr. VAN DUZER.

Until further notice:

Mr. BURKE of South Dakota with Mr. DAVEY of Louisiana.

Mr. DOVENER with Mr. SPARKMAN.

Mr. DRISCOLL with Mr. RANSDELL of Louisiana.

Mr. FOSS with Mr. MEYER.

Mr. FOSTER of Vermont with Mr. POU.

Mr. BROWN with Mr. CLAUDE KITCHIN.

Mr. HITT with Mr. LEGARE.

Mr. HUFF with Mr. WOOD of Missouri.

Mr. JENKINS with Mr. SMITH of Kentucky.

Mr. KNOPF with Mr. WEISSE.

Mr. MCCALL with Mr. BROUSSARD.

Mr. LILLEY of Connecticut with Mr. REID.

Mr. MADDEN with Mr. GARBER.

Mr. OTJEN with Mr. PADGETT.

Mr. POWERS of Maine with Mr. GAINES of Tennessee.

Mr. REYNOLDS with Mr. MCDERMOTT.

Mr. SCHNEEBELI with Mr. PATTERSON of Tennessee.

Mr. WM. ALDEN SMITH with Mr. SHEPPARD.

Mr. WATSON with Mr. LITTLE.

Mr. WELBORN with Mr. GUDGER.

Until May 18, 1906:

Mr. CHAPMAN with Mr. HOPKINS.

Until May 24, 1906:

Mr. FULLER with Mr. RICHARDSON of Kentucky.

For the session:

Mr. BRADLEY with Mr. GOULDEN.

The result of the vote was announced as above recorded.

The SPEAKER. The Clerk will report the next amendment.

The Clerk read as follows:

On page 72, line 21, after the words "expeditious delivery," insert the following: "*Provided*, That any bid for the construction of any of said vessels upon the Pacific coast shall have a differential of 4 per cent in its favor, which shall be considered by the Secretary of the Navy in awarding contracts for the construction of said vessels."

The SPEAKER. The question is on agreeing to the amendment.

Mr. NEEDHAM. Mr. Speaker, I demand the yeas and nays.

The SPEAKER. As many as are in favor of ordering the yeas and nays will rise and stand until counted.

Mr. NEEDHAM. Mr. Speaker, the demand for the yeas and nays was a mistake; I meant division.

The House divided; and there were—ayes 102, noes 100.

Mr. WILLIAMS. Mr. Speaker, I ask for the yeas and nays.

The yeas and nays were ordered.

The question was taken; and there were—yeas 121, nays 118, answered "present" 17, not voting 125, as follows:

YEAS—121.

Adams, Wis.	Cooper, Wis.	Grosvenor	Loud
Alexander	Cromer	Hale	McCarthy
Allen, Me.	Crumpacker	Hamilton	McCleary, Minn.
Bannon	Currier	Haugen	McCreary, Pa.
Barchfeld	Curtis	Hayes	McGavin
Bartholdt	Cushman	Hedge	McKinlay, Cal.
Bates	Dale	Hepburn	McKinley, Ill.
Bede	Darragh	Hermann	McKinney
Bennet, N. Y.	Davis, Minn.	Higgins	McLachlan
Bishop	Dawes	Hinshaw	Mann
Bonynge	Dawson	Holliday	Marshall
Boutell	Denby	Howell, Utah	Miller
Brooks, Colo.	Dixon, Mont.	Hughes	Minor
Brownlow	Draper	Humphrey, Wash.	Mondell
Buckman	Dunwell	Jones, Wash.	Mouser
Burke, Pa.	Esch	Kahn	Murphy
Butler, Pa.	Fletcher	Keifer	Needham
Calder	Foster, Ind.	Kinkaid	Nevin
Calderhead	French	Knowland	Norris
Campbell, Kans.	Gardner, Mich.	Landis, Chas. B.	Perkins
Campbell, Ohio	Gardner, N. J.	Landis, Frederick	Powers
Capron	Gilbert, Ind.	Law	Rives
Chaney	Gillett, Cal.	Le Fevre	Samuel
Cocks	Graff	Littauer	Scott
Cole	Graham	Littlefield	Slemp
Conner	Greene	Longworth	Smith, Cal.

Smith, Samuel W.	Stevens, Minn.	Thomas, Ohio	Wilson
Smyser	Sulloway	Towne	Young
Southwick	Sulzer	Tyndall	
Sperry	Tawney	Volstead	
Sterling	Taylor, Ohio	Waldo	

NAYS—118.

Acheson	Ellerbe	Kennedy, Nebr.	Richardson, Ala
Adams, Pa.	Fitzgerald	Kitchin, Wm. W.	Rixey
Adamson	Flood	Kline	Roberts
Aiken	Floyd	Lacey	Robertson, La.
Ames	Foss	Lamb	Robinson, Ark.
Bankhead	Gaines, W. Va.	Lawrence	Rucker
Bartlett	Garner	Lee	Russell
Beall, Tex.	Garrett	Lester	Ryan
Bennett, Ky.	Gilbert, Ky.	Lewis	Shackleford
Birdsall	Gill	Lindsay	Sherley
Bowers	Gillespie	Livingston	Sherman
Bowie	Gillett, Mass.	Lloyd	Slayden
Brantley	Glass	Loudenslager	Smith, Md.
Brick	Goldfogle	McNary	Smith, Tex.
Broocks, Tex.	Granger	Macon	Spight
Brundidge	Gregg	Maynard	Stafford
Burgess	Hardwick	Meyer	Stanley
Burleson	Hay	Moon, Pa.	Sullivan, Mass.
Burton, Ohio	Heflin	Moon, Tenn.	Talbott
Candler	Henry, Conn.	Mudd	Thomas, N. C.
Clark, Fla.	Henry, Tex.	Olmsted	Underwood
Clark, Mo.	Hoar	Page	Wallace
Clayton	Houston	Patterson, N. C.	Wanger
Dalzell	Howard	Patterson, S. C.	Webb
De Armond	Hubbard	Payne	Weeks
Deemer	Hull	Pollard	Wiley, Ala.
Dickson, Ill.	Hunt	Pujo	Williams
Dixon, Ind.	Johnson	Randell, Tex.	Zenor
Dwight	Jones, Va.	Rhinock	
Edwards	Keliher	Rhodes	

ANSWERED "PRESENT"—17.

Bell, Ga.	Finley	Griggs	Reid
Burnett	Foster, Vt.	Humphreys, Miss.	Watkins
Chapman	Fuller	Jenkins	
Cousins	Gardner, Mass.	Lever	
Davey, La	Goulden	Otjen	

NOT VOTING—125.

Allen, N. J.	Goebel	Mahon	Smith, Ky.
Andrus	Gronna	Martin	Smith, Wm. Alden
Babcock	Gudger	Michalek	Smith, Pa.
Beidler	Haskins	Moore	Snapp
Bingham	Hearst	Morrell	Southall
Blackburn	Hill, Conn.	Murdock	Southard
Bowersock	Hill, Miss.	Olcott	Sparkman
Bradley	Hitt	Overstreet	Steenerson
Broussard	Hogg	Padgett	Stephens, Tex.
Brown	Hopkins	Palmer	Sullivan, N. Y.
Burke, S. Dak.	Howell, N. J.	Parker	Taylor, Ala.
Burleigh	Huff	Parsons	Tirrell
Burton, Del.	James	Patterson, Tenn.	Townsend
Butler, Tenn.	Kennedy, Ohio	Pearre	Trimble
Byrd	Ketcham	Pou	Van Duzer
Cassel	Kitchin, Claude	Prince	Van Winkle
Cockran	Klepper	Rainey	Vreeland
Cooper, Pa.	Knapp	Ransdell, La.	Wachter
Davidson	Knopf	Reeder	Wadsworth
Davis, W. Va.	Lafean	Reynolds	Watson
Dovener	Lamar	Richardson, Ky.	Webber
Dresser	Legare	Rodenberg	Weems
Driscoll	Lilley, Conn.	Ruppert	Weisse
Ellis	Lilley, Pa.	Schneebeli	Welborn
Fassett	Little	Scroggy	Wharton
Field	Lorimer	Shartel	Wiley, N. J.
Flack	Lovering	Sheppard	Wood, Mo.
Fordney	McCall	Sibley	Wood, N. J.
Fowler	McDermott	Sims	Woodyard
Fulkerson	McLain	Small	
Gaines, Tenn.	McMorran	Smith, Ill.	
Garber	Madden	Smith, Iowa	

So the amendment was agreed to.

The following additional pairs were announced:

For the vote:

Mr. BURLEIGH with Mr. GAINES of Tennessee.

Mr. BRADLEY with Mr. GOULDEN.

Mr. SMITH of Iowa with Mr. BYRD.

For the balance of the day:

Mr. RODENBERG with Mr. GRIGGS.

Mr. MAHON with Mr. BURNETT.

Mr. MORRELL with Mr. SULLIVAN of New York.

Mr. GRONNA with Mr. STEPHENS of Texas.

The SPEAKER. This vote is so close that the Chair will order a recapitulation of it.

The vote was recapitulated.

The result of the vote was then announced as above recorded.

The SPEAKER. The question is on the engrossment and third reading of the bill.

The question was taken; and the bill was ordered to be engrossed, and read a third time, and it was accordingly read the third time.

Mr. BUTLER of Pennsylvania. Mr. Speaker, I move to recommit the bill, and on that motion I demand the previous question.

The SPEAKER. The gentleman from Pennsylvania [Mr. BUTLER] moves to recommit the bill to the Committee on Naval Affairs, and on that motion demands the previous question.

The question was taken; and the previous question was ordered.

The SPEAKER. The question is on the recommitment of the bill to the Committee on Naval Affairs.

The question was taken; and the Speaker announced that the noes seemed to have it.

Mr. WILLIAMS. Division, Mr. Speaker.

The House divided; and there were—ayes 53, noes 157.

So the motion was rejected.

The SPEAKER. The question is on the passage of the bill.

The question was taken; and the bill was passed.

Mr. FOSS. Mr. Speaker, I ask that the Clerk may have authority to change the total. It is simply a matter of addition.

The SPEAKER. The gentleman asks unanimous consent that the Clerk may change the total in a certain particular, which the Clerk will report.

The Clerk read as follows:

On page 33, line 16, change the first word in the line from "eight" to "seven;" so it will read:

"Total public works, navy-yards and stations, $2,748,450."

Mr. WILLIAMS. Mr. Speaker, reserving the right to object, I wish to state that I would dislike very much to object to a request of that sort, but a bill which carries with it the newly announced principle of protection within the Union in giving Government contracts I think ought to be met with an objection to everything requiring unanimous consent. I shall, therefore, object.

The SPEAKER. The gentleman from Mississippi objects.

Mr. FOSS. Mr. Speaker, I ask that I may have permission to extend my remarks in the RECORD.

The SPEAKER. Is there objection? [After a pause.] The Chair hears none.

On motion of Mr. Foss, a motion to reconsider the vote by which the bill was passed was laid on the table.

TRANSPORTATION AND FREIGHT RATES IN THE OIL INDUSTRY.

The SPEAKER laid before the House the following message from the President of the United States; which was read, referred to the Committee on Interstate and Foreign Commerce, and ordered to be printed:

To the Senate and House of Representatives:

I transmit herewith the full report of the Commissioner of the Bureau of Corporations in the Department of Commerce and Labor on the subject of transportation and freight rates in connection with the oil industry referred to in my message of the 4th instant, it having been delayed in printing.

THEODORE ROOSEVELT.

WHITE HOUSE, *May 17, 1906.*

BRIDGE ACROSS PEND D'OREILLE RIVER, WASHINGTON.

The SPEAKER laid before the House the following Senate bill, a similar House bill being on the Calendar.

The Clerk read as follows:

A bill (S. 6128) to authorize the construction of a bridge across the Pend d'Oreille River, in Stevens County, Wash., by the Pend d'Oreille Development Company.

Be it enacted, etc., That the Pend d'Oreille Development Company, a corporation organized under the laws of the State of Washington, its successors or assigns, be, and they are hereby, authorized to construct, maintain, and operate a wagon bridge and approaches thereto across the Pend d'Oreille River at or near Big Falls (sometimes called Metaline Falls), in Stevens County, in the State of Washington, in accordance with the provisions of the act entitled "An act to regulate the construction of bridges over navigable waters," approved March 23, 1906.

SEC. 2. That the right to alter, amend, or repeal this act is hereby expressly reserved.

Mr. JONES of Washington. Mr. Speaker, I desire to offer an amendment, which I have submitted to the chairman of the committee, and it is entirely satisfactory to him.

The Clerk read as follows:

In line 6, after the word "wagon," insert the words "railroad and foot."

The amendment was agreed to.

The bill as amended was ordered to a third reading; and it was accordingly read the third time, and passed.

On motion of Mr. JONES of Washington, a motion to reconsider the vote by which the bill was passed was laid on the table.

House bill 19108, on the same subject, was ordered to lie on the table.

ENTRY OF AGRICULTURAL LANDS IN FOREST RESERVES.

The SPEAKER laid before the House the bill (H. R. 17576) providing for the entry of agricultural lands in forest reserves, with a Senate amendment, which was read.

Mr. SMITH of California. Mr. Speaker, I move that the House nonconcur in the amendment, and ask for a conference.

The motion was agreed to.

The SPEAKER announced the appointment of Mr. LACEY, Mr. SMITH of California, and Mr. BURNETT as conferees.

LEAVE TO EXTEND REMARKS.

Mr. HILL of Connecticut. Mr. Speaker, I ask unanimous consent to extend my remarks in the RECORD on the naval appropriation bill.

The SPEAKER. Is there objection? [After a pause.] The Chair hears none.

OSWEGO, N. Y.

Mr. PAYNE. Mr. Speaker, I move that the House resolve itself into Committee of the Whole House on the state of the Union for the consideration of the bill (H. R. 13938) to extend the privileges of the seventh section of the act approved June 10, 1880, to the port of Oswego, N. Y.

The motion was agreed to.

The House accordingly resolved itself into Committee of the Whole House on the state of the Union, Mr. ALEXANDER in the chair.

The CHAIRMAN. The House is in Committee of the Whole House on the state of the Union for the consideration of the bill H. R. 13938, which the Clerk will report.

The Clerk read as follows:

A bill (H. R. 13938) to extend the privileges of the seventh section of the act approved June 10, 1880, to the port of Oswego, N. Y.

Be it enacted, etc., That the privileges of the seventh section of the act approved June 10, 1880, entitled "An act to amend the statutes in relation to immediate transportation of dutiable goods, and for other purposes," be, and the same are hereby, extended to the port of Oswego, in the State of New York.

Mr. PAYNE. Mr. Chairman, as the House knows, the port of Oswego is an old port of entry, situated on Lake Ontario. The object of this bill is simply to extend the privileges of the act of 1880, so that goods destined for the port of Oswego that come through any other port of entry in the United States may go there in bond and be examined and appraised at the port of Oswego and the duties there paid. There are a whole set of officers at Oswego, and it will not cost the Treasury a dollar to extend that privilege.

Mr. SULZER. I would like to ask the gentleman from New York if this bill has been unanimously reported by the Committee on Ways and Means.

Mr. PAYNE. It has been unanimously reported by the Committee on Ways and Means.

Mr. MANN. Mr. Chairman, may I ask the gentleman from New York a question? Is this one of those collection districts he is creating like some of those other districts to which the gentleman is opposed?

Mr. PAYNE. This is a district that pays the Government a good deal more than it costs to collect the revenues that come there. It has a full set of clerks and appraisers and all the officers necessary to carry out the provisions of this bill without a single penny of tax to the Government.

Now, Mr. Chairman, if there are no more questions, and no further debate and no amendments, I move that the committee rise and report the bill with a favorable recommendation.

The motion was agreed to.

The committee accordingly rose; and the Speaker having resumed the chair, Mr. ALEXANDER, Chairman of the Committee of the Whole House on the state of the Union, reported that that committee had had under consideration the bill H. R. 13938, and had directed him to report the same back to the House with the recommendation that it do pass.

The bill was ordered to be engrossed for a third reading; and being engrossed, it was accordingly read the third time and passed.

On motion of Mr. PAYNE, a motion to reconsider the vote by which the bill was passed was laid on the table.

NATURALIZATION BILL.

Mr. BONYNGE. Mr. Speaker, I move that the House resolve itself into Committee of the Whole House on the state of the Union for the further consideration of the bill H. R. 15442, the naturalization bill, and pending that motion I ask that general debate on the bill be closed in one hour.

The SPEAKER. The gentleman from Colorado moves that the House resolve itself into Committee of the Whole House on the state of the Union for the further consideration of the naturalization bill, and pending that motion he asks unanimous consent that general debate be closed in one hour.

Mr. WILLIAMS. I object.

Mr. BONYNGE. Mr. Speaker, I move that general debate be closed in one hour.

Mr. WILLIAMS. I objected for the purpose of finding out what the request was.

Mr. BONYNGE. That general debate on the naturalization bill should close in an hour and it be then considered under the five-minute rule.

Mr. WILLIAMS. I have no objection to that.

Mr. HEPBURN. Mr. Speaker, I desire to raise the question of consideration.

Mr. BONYNGE. I raise the point of order that the question of consideration is not now in order, for the reason that the only way it can be determined is by voting down the motion to go into Committee of the Whole House.

The SPEAKER. The Chair is prepared to rule. The question of consideration would come as indicated if raised. It can not be raised pending the motion to fix the time that debate shall run. Is there objection to closing general debate in one hour? [After a pause.] The Chair hears none.

Mr. MANN. Mr. Speaker, how is that time to be controlled?

The SPEAKER. Under the rule and by the Chair.

Mr. MANN. That means that whoever gets the floor is entitled to the floor for an hour.

The SPEAKER. In the opinion of the Chair the hour would go to whoever got the floor.

Mr. MANN. Well, unless some arrangement is made I shall object.

The SPEAKER. The gentleman is too late.

Mr. HEPBURN. Mr. Speaker, I desire to say that if the motion should be voted down I wish to call for the regular order——

Mr. BONYNGE. I call for the regular order.

Mr. GOLDFOGLE. Mr. Speaker, a parliamentary inquiry.

The SPEAKER. The gentleman will state it.

Mr. GOLDFOGLE. When the naturalization bill was up in Committee of the Whole House some time ago, there were twenty-four minutes remaining on this side when the matter was under general debate. I would like to ask whether that twenty-four minutes is still reserved?

The SPEAKER. No; general debate by unanimous consent is to close in one hour after the House goes into Committee of the Whole.

Mr. GOLDFOGLE. I should like to ask the chairman of the committee to consent to an additional twenty-four minutes which was reserved at that time.

Mr. PAYNE. Regular order, Mr. Speaker.

The SPEAKER. The gentleman from New York calls for the regular order.

Mr. BONYNGE. Mr. Speaker, I ask for a modification of the unanimous consent that was given a moment ago.

The SPEAKER. The gentleman can present another proposition, but general debate after going into Committee of the Whole is limited to one hour. The only way he can get rid of it is by unanimous consent.

Mr. HEPBURN. A parliamentary inquiry, Mr. Speaker.

The SPEAKER. The gentleman will state it.

Mr. HEPBURN. If this motion should be voted down, would it not then be competent to move to go into Committee of the Whole House on the state of the Union for the purpose of considering the bill which was made a special order for this time—the pure-food bill?

The SPEAKER. The Chair presumes that if this motion fails another privileged motion would be in order. The question is on the motion of the gentleman from Colorado, that the House resolve itself into Committee of the Whole House on the state of the Union for the further consideration of the bill H. R. 15442—the naturalization bill.

The question was taken; and the Chair being in doubt, on a division there were—ayes 114, noes 60.

So the motion was agreed to.

Accordingly the House resolved itself into the Committee of the Whole House on the state of the Union, with Mr. LAWRENCE in the chair.

Mr. BONYNGE. Mr. Chairman, I ask unanimous consent to have read from the Clerk's desk certain amendments which the committee propose to offer at the proper time. I ask to have the amendments read now for information of the committee before general debate is had.

The CHAIRMAN. Without objection, the Clerk will read the proposed amendments for the information of the committee.

There was no objection.

The Clerk read as follows:

Amendment No. 1: Line 20, page 4, after the word "alien," insert the following words: "*Provided, however*, That no alien who, in conformity with the law in force at the date of his declaration, has declared his intention to become a citizen of the United States shall be required to renew such declaration."

Amendment No. 2: Line 21, page 4, strike out the word "five" and insert in lieu thereof the word "seven."

Amendment No. 3: Line 12, page 5, after the word "petition," insert the following words: "*Provided*, That if he has filed his declaration before the passage of this act he shall not be required to sign the petition in his own handwriting."

Amendment No. 4: Line 3, page 10, after the word "States," add the following words: "*And provided further*, That the requirements of this section shall not apply to any alien who has, prior to the passage of this act, declared his intention to become a citizen of the

United States in conformity with the law in force at the date of making such declaration."

Amendment No. 5: Line 23, page 13, strike out the words "certificate therefor" and insert in lieu thereof the words "duplicate thereof."

Amendment No. 6: Line 7, page 20, after the word "court," insert the words "or his authorized deputy or assistant;" and in line 8, page 20, strike out the words "any other person."

Mr. BONYNGE. Mr. Chairman, I ask unanimous consent that the hour's time may be equally divided, one-half to be controlled by myself and one-half by the gentleman from New York [Mr. GOLDFOGLE].

The CHAIRMAN. Is there objection to the request made by the gentleman from Colorado? [After a pause.] The Chair hears none, and it is so ordered. The gentleman from Colorado is recognized for thirty minutes.

Mr. BONYNGE. Mr. Chairman, I do not desire to take up any time at the present time. I occupied the floor for something like two hours when we were in Committee of the Whole before, and I will now ask the gentleman from New York [Mr. GOLDFOGLE] to consume some of his time.

Mr. GOLDFOGLE. Mr. Chairman, I yield five minutes to the gentleman from Illinois [Mr. WHARTON].

Mr. WHARTON. Mr. Chairman, I propose when this bill is taken up for consideration by sections, to offer the following amendment to section 9:

Strike out in lines 22 and 23 the words "write in;" in line 23, after the word "or," strike out the word "in;" in lines 23 and 24 strike out the words "and who can not read, speak, and understand the English language;" and insert in line 22, after the word "not," the words "read, write, speak, and understand;" so that the same as amended shall read:

"That no alien shall hereafter be naturalized, or admitted as a citizen of the United States who can not read, write, speak, and understand his own or the English language: *Provided*, That this requirement shall not apply to aliens who are physically unable to comply therewith, if they are otherwise qualified to become citizens of the United States."

Upon this section of the bill under consideration, providing that hereafter no alien shall be naturalized or admitted as a citizen unless he can write in his own language or the English language, and who can not read, speak, and understand the English language, is a provision that is un-American, unpatriotic, and ill-advised for many reasons. It is not the true test of citizenship in any material sense. As I view the subject, a man may make just as good a citizen, though ignorant and unable to parse a sentence in English as many of those who can do so, and sometimes better. It isn't his ability to master a certain language, or to drill his mind in grammatical construction, that determines his desirability for citizenship.

Many aliens come to our shores who have the aspiration present in the breast of all men to better their conditions in life. These immigrants are not familiar with our language; they are poor, uneducated, and downtrodden; they have suffered the tortures of poverty and are struggling to overcome them, and often make superhuman efforts to get to our country—the promised land—in order to get rid of the sore-creating burdens they have borne at home. We claim equality of all men—not by reason of birth, breeding, or favor—but the equality which comes from individual effort, which says to everybody, "Get out and hustle, strive, and fight the battle of existence, and our country will place no stumbling block in your path, place no burden on your shoulders to keep you down because you were of lowly birth, or because you were not lucky enough to be born with a silver spoon in your mouth."

The average alien when he gets here takes his personal belongings on his shoulder and cheerfully turns his face toward the West, the South, or the North, willing to encounter hardships, endure sufferings, and meet privation after privation for his chance to compete with the millions already there. He hasn't anything to fall back on except two brawny hands. He must work to keep himself provided with the necessities of life; work to provide the hungry mouths of the little flock and the faithful, hard-working spouse he has brought with him and who share his lot, good or bad as it may be. He can't go to an office at 9 o'clock in the morning and home at 5 in the afternoon. His toil starts early with the blast of a whistle, with the sound of a gong, or with the rise of the sun; hard, laborious, physical toil in the shop, the factory, the mill, or the field. There he labors hour after hour till the day's work is done, and then home to seek rest and shelter. Shall this man—can this man—sit up half the night trying to learn to read and write and speak and think in English? If he be unusually energetic and thirsts for knowledge, he will get it after he has had his supper by reading a paper, book, or magazine printed in the tongue he has been taught from infancy; printed in the tongue he has always known, printed in the only tongue in which he can read and think intelligently. His thoughts seek expression in his language, because he thinks in his language. If he seeks information from others, it is natural for him to go to those who are of his race. He can make them understand him, and he can understand them; he has more confidence in his ability to express himself intelligently and to understand accurately and with less fear of mistake among those who speak his language than in any other.

Mr. BARTHOLDT. Mr. Chairman, I would like to ask the gentleman a question. Does this amendment provide that he must be able to read and write his own language?

Mr. WHARTON. Yes; he can not be naturalized or admitted as a citizen of the United States if he can not read, write, and speak, and understand his own or the English language.

Mr. BARTHOLDT. Suppose he is not able to write his own language, and suppose he has no opportunity in this country to learn how to read and write his own language, or how to read and write the English language, what will then be done with him? Is he to be barred for all time from the boon of American citizenship?

Mr. WHARTON. If he can not read or write some language, I do not see that there is very much chance for him. I believe there should be some provision, some qualification, for a man who becomes a citizen and who is clothed with the powers of citizenship in this country; and I believe if he be able to read and write in his own language so that he can understand it, or so that anybody else can understand it, that is sufficient. If educational qualifications proposed by section 9 are required, you simply build up a class of citizenship based upon what we call the classes, and not the masses. It puts a test upon him which is not fair.

Can you say that this man will not make a good citizen? It's the man's heart and intentions toward our principles, our Government, and our country that should, that must count. If he be able to understand our institutions and has a desire to be in accord with them, it does not make him any the less desirable as a citizen because he doesn't know how to describe them on paper or express them in the English language.

If our country were in need of soldiers to defend it against attack, this man could and would fight and stop the bullets and steel projectiles of the enemy as well as any other man in the same ranks who occupies the proud distinction of membership in this honorable body, and we would not reject him because he didn't happen to know how to write in his own or our language or because he couldn't speak our tongue.

The foreigners who come to us have to work and labor and toil, so that their children may receive the benefit of an education, and they can't stop to undo the education they themselves received and learn it all over again in our tongue. The difficulties in the way are apparent at a glance. The mind is matured, formed, and set, so that thought works in natural and prescribed processes. It is not the supple, pliable, and impressionable thing which is given to the young. A tree can be made to grow in any direction or angle when a sapling, but when it gets its growth it is firmly rooted and the fibers securely formed. Try and change its course and failure follows; yet, though the tree grows in a certain direction, it may still bear fruit, the same as one trained in a different bent. So it is with the man; he may be as heartily and earnestly interested in our Government and our country and may strive to fulfill the duties of citizenship just as loyally as if he had a thorough knowledge of our tongue.

I have many thousands of foreigners in the district which I have the honor to represent on the floor of this House; and though normally it is about 10,000 Democratic, and though many foreigners can not read or write or even speak English, yet they were able to think and decide and change from the Democratic party and vote the Republican ticket, and thus help to swell the majority of President Roosevelt by many thousands of votes. While, in the main, many of them are untutored and unskilled in the science of our language or their own, they are a shrewd and common-sense people, and they quickly saw it was to their interest and the country's interest to change their votes, and it is pretty generally agreed that in that respect they were not far from wrong. Now, I don't propose that these people, or those who come to us hereafter and are like them, shall be deprived of citizenship because they are unfortunate enough to be unable to write in our tongue, or because they are unfortunate enough to be unable to read, speak, or understand the English language as we do. They are the right sort if they have our interest and our welfare at heart and make that interest and welfare their interest and welfare; if they can understand and appreciate the duties required and expected of them as citizens of this United States; if they are earnestly striving to uplift themselves and their families, and if they are of good moral character and can understand in any way or any tongue, whether theirs or ours, concerning the rights,

duties, obligations, and necessities devolving upon them by reason of their acquisition of the inestimable privilege of citizenship. They should be granted the right which, in all justice to them and to ourselves, should be showered upon them as one of the great blessings of our free American institutions and force the world to acknowledge the truth of our boast of the equality of all within the confines of our own progressive country. [Applause.]

Mr. BONYNGE. Mr. Chairman, just a moment or two to state another amendment. In the amendments that were read from the desk two amendments that the committee intends to offer were omitted, and I desire to call the attention of the Committee of the Whole to those amendments. On page 3, line 2, after the word "State," an amendment will be offered to insert the words "or Territory," so that the Territorial courts having a seal and clerk and jurisdiction in actions in law in which the amount in controversy is unlimited, will be entitled to naturalize aliens. Another amendment that will be offered by the committee will be to lines 1 and 3, on page 14, which relate to the fees to be charged for naturalization. The fees prescribed by the bill at the present time are $1 when the declaration of intention is made. That will remain the same. Then, in line 1, of page 14, the word "three" will be inserted in lieu of the word "five;" and in line 3 of page 14 the word "three" will also be inserted in lieu of the word "five," so that the total fees for naturalization under the amendment that will be offered by the committee will be $7 instead of $11.

Mr. STAFFORD. Will the gentleman permit a question to be put right here regarding the fees?

Mr. BONYNGE. Yes.

Mr. STAFFORD. I would like to ask the gentleman what are the fees now provided by statute?

Mr. BONYNGE. No statute of the United States regulates specifically the fees in naturalization proceedings. The fees are now regulated by the different States of the Union, and vary in every State, so we have about as many different fees charged for naturalization as we have States of the Union—pretty nearly as many.

Mr. STAFFORD. In arriving at the revised figures of $3 for the filing and docketing of the petition and the $3 for the issuance of the certificate, what rule has the gentleman followed in determining the proposed fees?

Mr. BONYNGE. We endeavored, Mr. Chairman, to ascertain as near as we could, and it was largely a matter of conjecture, what the expenses of the national supervision of naturalization would be. We were at first inclined to think that it would take at least $11, which we provided in the bill. Upon further consideration we have concluded that the fees provided for by the amendment which we will offer will be sufficient to pay the expenses, and it is our desire to charge only a sufficient amount to cover the expenses of naturalization.

Mr. STAFFORD. As I understand, one half of these fees is to be retained by the various clerks and the other half is to be sent to the Department of Commerce and Labor.

Mr. BONYNGE. Yes; for the purpose of maintaining the national bureau.

Mr. STAFFORD. Is the gentleman acquainted with the law of 1898, which compels the clerks of the United States courts when they receive fees in naturalization cases to turn them over in toto into the Treasury of the United States rather than retain them as they had been doing theretofore?

Mr. BONYNGE. There was some reference to that statute during our hearings. The member of the committee who has this particular section especially in charge [Mr. BENNET] will undertake to take care of that provision when we reach the section. Now, Mr. Chairman, I did not take the floor to consume the half hour which is allotted to this side. I answered a great many of these questions when the bill was under consideration before. I simply desired to have these amendments before the committee during the general discussion, and unless the gentleman from New York desires to take the floor, I will yield ten minutes——

Mr. GOLDFOGLE. I rose for the purpose of asking a question of the gentleman.

Mr. BONYNGE. A very short question I will answer.

Mr. GOLDFOGLE. What are the fees now in Federal courts for naturalization?

Mr. BONYNGE. I think they vary in the different States.

Mr. GOLDFOGLE. What is the minimum?

Mr. BONYNGE. I can not answer the question; there is no general statute regulating fees in the Federal courts.

Mr. STAFFORD. If the gentleman will pardon me, there is a statute which regulates the fees of clerks for all services.

Mr. BONYNGE. But no fees for naturalization are regulated.

Mr. STAFFORD. The general law covers all instances of naturalization, and they are not allowed to charge any more for naturalization than for like services in other cases.

Mr. BONYNGE. No; probably not.

Mr. SMITH of California. May I ask the gentleman a question?

Mr. BONYNGE. You must make the question short or my half hour will be consumed.

Mr. SMITH of California. I am going to make it short. On page 6, line 11, I want to ask the gentleman what is meant by the word "district;" whether it means District of Columbia, district court, or Congressional district?

Mr. BONYNGE. What page and line?

Mr. SMITH of California. Page 6, line 11. What is intended by the word "district," which seems quite indefinite?

Mr. BONYNGE. Why, it means the District of Columbia and the district of Alaska.

Mr. SMITH of California. Might it not mean Congressional district or judicial district or anything else just as well?

Mr. BONYNGE. No; we have three subdivisions in continental America: We have the States, the Territories, the District of Columbia, and the district of Alaska, and in the connection in which that word is used I can not conceive how anybody can misunderstand it.

Mr. SMITH of California. It refers there in certain cases to the jurisdiction of Federal courts.

Mr. BONYNGE. I must ask the gentleman not to enter into an argument now upon that section.

The CHAIRMAN. The gentleman from Colorado declines to yield further.

Mr. BONYNGE. I yield five minutes to the gentleman from Pennsylvania [Mr. ADAMS].

The CHAIRMAN. The gentleman from Pennsylvania is recognized for five minutes.

Mr. ADAMS of Pennsylvania. Mr. Chairman, I rise to express my interest in this bill, being a member of the committee and having sat through all of the hearings, not only in this session of Congress, but in previous ones; and those hearings being fortified by the commission which was appointed to investigate and report on this subject, I think this legislation deserves almost if not the unanimous support of this House.

I am particularly interested and would call the attention of the House to the second provision of importance in this bill, which is that those who are about to become naturalized as citizens of the Republic should be made to establish the fact that they propose to live in this country. Having had to do somewhat with the foreign relations of our country, I have had brought to my attention the great abuse in this regard. People from the Far East come here and make their declarations of becoming citizens and then take out their papers and return to the East, where they claim the citizenship of this country in order to protect themselves against many of the annoyances which are imposed upon them by their native country. It has been carried to such an extent that we have had several annoying cases where we have been obliged to step in and protect these quasi citizens against difficulties in which they have become involved through business reasons and others in the country in which they reside.

I have no desire, Mr. Chairman, to put any restrictions except proper ones upon those who wish to enjoy the great privileges of citizenship of the United States, but I have a very strong protest to make against anyone who wishes to secure that great privilege, a privilege that should be prized by the applicant, for the purpose of simply using it as a matter for his business interests and to seek the protection of this country when he may become involved in any difficulty abroad. So much has this been abused that we have, in the case of Jerusalem, nearly 1,000 people who have secured our citizenship and who seek protection in this country whenever they may get involved in any difficulties there. The provisions of this bill throw a safeguard around this abuse. In my judgment it is one of the most important features of this proposed legislation. It will tend to prevent this imposition on the liberality with which we extend the right to foreigners to become citizens of the United States, and I trust that that provision will receive the hearty support of the House.

The provision, also, which insists that they shall be able to read and understand the English language is certainly a proper one. I am one of those, Mr. Chairman, who believe it proper to admit immigrants to this country without the educational test, although when that bill comes, as it stands, I mean to vote for it, because we had better have that restriction than none at all. But, sir, the admission of a man to this country merely to earn a living is a very different proposition from allowing him

to become a citizen to participate in the making of laws and the election of Members to this House and to participate in our Government.

Mr. GOLDFOGLE. Mr. Chairman——

The CHAIRMAN. Does the gentleman from Pennsylvania yield to the gentleman from New York [Mr. GOLDFOGLE]?

Mr. ADAMS of Pennsylvania. I would like to do so, but I have only five minutes.

To allow him to participate in the freedom of our Government and the election of Representatives is a very serious responsibility, and I think any reasoning and thinking man will see the force of the proposition that the man who is to participate in the election of Members of Congress and other officers of our Government at least should be able to understand the English language and read it. How else can he inform himself on the principles of our Government? How else can he receive information on the questions that may be involved in the election?

Mr. MCNARY. Will the gentleman yield?

Mr. ADAMS of Pennsylvania. I decline to yield.

How else can he inform himself on the issues involved in the election about to take place unless orally informed or unless he can read the public press that may inform him on the issues involved?

The CHAIRMAN. The time of the gentleman has expired.

Mr. GOLDFOGLE. Mr. Chairman, I yield five minutes to the gentleman from New York [Mr. GOULDEN].

Mr. GOULDEN. Mr. Chairman, during the month of March in a discussion with the gentleman from Tennessee [Mr. HOUSTON] I questioned the veracity of the reports made by Marcus Braun, the special inspector of immigration.

Since then I have investigated the matter fully, have interviewed the Secretary of Commerce and Labor, and desire at this time to withdraw the charges made on that occasion against that gentleman.

The subject under discussion, namely, House bill No. 15442 from the Committee on Immigration and Naturalization, is of vital importance. It provides for the establishment of a bureau of immigration and naturalization, and for a uniform rule for the naturalization of aliens throughout the United States.

I have studied this question for years, watched the operation of existing laws, and introduced bills in the last and present Congress to remedy the glaring evils prevalent under our present statutes.

The United States grand jury for the southern district of the State of New York having had so many cases of false naturalization, sale of certificates, and a general miscarriage of the laws on this subject that they spent months in 1903 investigating the matter. The discoveries made were truly appalling. Convictions on a fair trial were set aside on account of technicalities, or the conflict between the State and Federal law. [Applause.]

Hearings on bill No. 12762, introduced by me early in the Fifty-eighth Congress, were held by the Committee on Immigration and Naturalization. The first of these occurred March 15, 1904. In this connection I desire to quote the testimony of Clarence S. Houghton, esq., and Joel M. Marx, esq., assistant United States attorneys of New York, on the bill referred to and given before the committee on the date mentioned:

Mr. HOUGHTON. Mr. Chairman and gentlemen of the committee, at the suggestion of General Burnett, the United States district attorney for the southern district of New York, with the assistance of Mr. Marx, the special assistant United States district attorney, who was assigned especially to prosecute these naturalization cases, I drafted this bill No. 12762, simply as a temporary measure.

You can all realize that a question as important as this is—that is, the naturalization of aliens—will require a great deal of consideration, because it is a very important matter. The question of making aliens citizens goes right into the vitals of this country. So that in drafting this bill I studied very carefully the laws that we already have and tried to keep those laws as nearly as possible what they are to-day, but to simply remedy such defects as our experience in the city of New York during the past eight months led us to believe should be remedied in the statutes as they now stand, by amending certain of the statutes of the United States.

In order to give you an idea of the evils of naturalization, I will simply run over the subject very hastily, as I find my time is short, so that when I come to speak of these different paragraphs you can know what I am talking about.

It seems that last March an alien appeared as a witness for a friend of his who desired to become a citizen of the United States. He applied to the clerk of the district court for the southern district of New York. The clerk, upon examining the paper which he produced to show that he was a citizen, found that it was a forged paper, forged throughout; that is, the seal of the court was a forgery, the signature of the clerk of the court was a forgery, and the printing upon the paper was a forgery. As a result of that we started an investigation to find out where these forged papers came from, and assistants were sent to us from the Department of Justice to carry on this work. We found that a set of men in the city of New York had a plant by which they were printing these certificates of naturalization, having a counterfeit seal of the court, and one man being employed to copy, as nearly as he could, the name of the clerk of the court. It is rather interesting to know how and why these men made a plant of their own to supply these certificates of naturalization.

We now have a charge pending against the clerk of the court for the southern district of New York for issuing improperly certificates of naturalization. He would, according to the evidence that we have, obtain a certificate bearing the proper seal of the court and the signature of the clerk, but with the name of the applicant not filled in. He would then dispose of that certificate, in blank, without the name of the applicant. The applicant would take it outside and would fill in the name of the party desiring it; and for doing this the clerk received a certain sum of money. After a while he began to increase his prices, so that these Italians who we found were carrying on this plant thought it would be cheaper to make naturalization certificates themselves, which they did.

Now, in the city of New York—I must speak of that, because our work has been there—we find this naturalization fraud in almost every particular that you can think of. Not only, as I say, have these papers in blank, that have the seal of the court and the signature of the clerk upon them, filled in, but papers already filled in are taken out, the name is erased from them, and they are sold to other Italians. I am speaking particularly of Italians, because our work has been directed in that line. The name has been filled in. Then they get what they call certified copies, or duplicate certificates, from the court which issued them. Those certificates are obtained and are sold to other parties, or the name is erased therefrom and other names inserted.

Then, again, an alien who can not answer the questions that will be put to him by the clerk of the court and by the judge of the court will get a friend of his to come in, and he will substitute for the alien demanding the paper; the paper will be issued in the name of the alien requiring it or asking it, but it will be passed by the substitute, on account of the substitute.

Then, again, gentlemen, we have this: Aliens who are not entitled on account of age to the final papers (which I here designate as the certificate of naturalization), even though they have been coached up as to the questions that are propounded to them, will go into the court and swear that they are 18 or under the age of 18, so that they can get the final papers without the necessity of having a first paper. So that, gentlemen, they acquire these papers in any manner that they possibly can. An alien will go into court; he will obtain a paper by fraud, because, for instance, his witness will come in and swear that he was under the age of 18 when he arrived in this country, and he himself will corroborate that by swearing that he was under the age of 18.

He will take that paper. He may stay here a few years in this country, and then he will go abroad and sell it to another alien friend of his; or if he has an alien friend in Italy whom he wants to bring over to this country, he will send that paper over to Europe. The friend will take that paper and represent himself as a citizen when he passes through the immigration department. Not only that, but when aliens here have finished with their papers, they send them abroad and sell them. So that, gentlemen, it is necessary, in this temporary bill, to provide against certain abuses that we have found out through the prosecution of these cases.

There is one other thing of which I want to speak before going farther, and that is the matter of first papers. Under the municipal laws of the city of New York, in order to allow an alien to peddle he must either show the first paper—the declaration of intention—or he must show his certificate of naturalization. Consequently these aliens come in, and they will obtain a first paper; they will go up to the aliens' bureau and secure their license; then they will go and dispose of this first paper or declaration of intention to a friend and he will go and get a license, and they will send that from friend to friend.

Mr. BONYNGE. Substituting different names?

Mr. HOUGHTON. The same name.

Mr. BONYNGE. The same name?

Mr. HOUGHTON. The same name, and, unfortunately, there is no law now on the statute books of the United States prohibiting the selling of this declaration of intention; so that you will find that my first paragraph here is practically the same as in the Revised Statutes as they exist to-day.

Mr. BONYNGE. Pardon me just a moment, Mr. Houghton. In reference to getting these licenses under the same name—then does not the license run to half a dozen people of the same name?

Mr. HOUGHTON. It will run to a dozen; but you see——

Mr. BONYNGE. And does each man continue his business under a license under a different name than his own, then?

Mr. HOUGHTON. Under a different name than his own.

Mr. MARX. Perhaps the gentleman does not understand the necessity for a license. These are licenses which are issued to push-cart peddlers to go through the streets.

Mr. BONYNGE. Yes; I understand that. Then half a dozen people carry on their business under the same name?

Mr. MARX. Half a dozen people under one name, just as if there were half a dozen different people of the same name?

Mr. BONYNGE. Yes.

Mr. MARX. The license clerk, of course, could not tell the difference, because there is nothing in the paper to indicate a difference, or to indicate that they are the same people.

Mr. GOULDEN. Will Mr. Houghton explain before he goes any further, why these naturalization papers are so important in relation to employment in the city bureaus?

Mr. HOUGHTON. Oh, yes; I forgot to mention the object of these aliens, especially the Italians (or any other alien immigrants who come over here), in becoming naturalized citizens. Under the municipal law of New York no alien can be employed in a city department. He must be a naturalized citizen; and as the pay is excellent, of course the first object of every Italian who comes over to New York is to secure employment under the city. So he goes and gets a paper, whether he is entitled to it or not, either by substitution, false witness, or erasure, paying twelve or fifteen dollars for it, goes to the civil service, is passed there, and obtains employment. That is the object.

Going back now to this bill, gentlemen, paragraph 2 was inserted for this reason: In a case which I tried——

Mr. ADAMS. One minute, Mr. Houghton. This paragraph will not make any change in the time?

Mr. HOUGHTON. No; that is the same.

Paragraph 2 is slightly different, because there I say: "Any oath or affidavit required or authorized in this act may be taken before a judge, clerk, deputy clerk, or special deputy clerk of the courts named and specified in paragraph 1," that paragraph giving the same courts as the old act, before whom naturalization proceedings may be instituted.

The object of this paragraph, gentlemen, is this (I cite cases because our experience comes from cases which we have tried): I tried the case of a man who appeared as a witness in a naturalization case. He

was a man who had appeared many times as a witness in order to obtain naturalization papers for his friends. In that case, appearing as a witness, he took the oath before the deputy clerk of the court issuing the certificate of naturalization. In it he swore that he had known the applicant for five years, which he must do under the statute. It was proved that he had not known him for five years; he had only known him for a month or two. The paper was held up; the certificate was not issued because of certain other facts that the judge found out. But inasmuch as the law of the State of New York allows an oath to be taken before the clerk or deputy clerk of a court, we contended that inasmuch as he had made a false affidavit in a naturalization proceeding he was subject to indictment in the Federal courts.

At the first trial there was a disagreement by the jury. At the second trial he was convicted. Before sentence was passed counsel for the defendant raised the point that, inasmuch as the oath had been taken before a deputy clerk, and there was no statute of the United States permitting that oath to be taken before a deputy clerk of the court, notwithstanding the State court allows it, the Federal court had no jurisdiction. The judge wrote an elaborate opinion sustaining the contention of counsel, and the defendant was discharged. Now, it has been held by the court of appeals of the State of New York that the State courts do not have cognizance of offenses of this character. Consequently——

Mr. ROBB. Will you allow me to interrupt you?

Mr. HOUGHTON. Yes.

Mr. ROBB. Was your attention called to the prosecution of those naturalization frauds in St. Louis?

Mr. HOUGHTON. Yes.

Mr. ROBB. Before Judge Adams?

Mr. MARX. There is a higher decision than that of Judge Adams, and that is the decision of the circuit court of appeals of the United States, as reported in two Federal cases; and the decision of the court of appeals of the State of New York may not have been called to his attention.

Mr. HOUGHTON. So that we stand in this predicament, so far as our jurisdiction is concerned—that in the great city of New York, where we have so many cases, we can not prosecute these people in the State courts, and, under the learned decision of Judge Thomas, we can not prosecute them in the Federal courts.

Mr. ROBB. The change that you make is putting in the words "deputy clerk" and "special deputy?"

Mr. HOUGHTON. I am specifying the officers before whom they may be executed, and putting the words "any oath" in this act.

Mr. MARX. You see, paragraph 2 of the old act simply says "the oaths required in paragraph 1." That refers to a declaration of intention. This covers every oath.

Mr. HOUGHTON. Every oath.

Mr. MARX. Because it has been held that the oath of a witness which is taken upon a final examination is extra judicial and can not be punished; and consequently this makes it apply to every oath.

Mr. HOUGHTON. Yes. Now, I will hurry along. There is so much in this, gentlemen, that I do not know just what to say and what not to say.

Paragraph 3 is entirely new.

The object of that paragraph is that we may have some description by which we can go at the time an alien gets his first papers, as we call them, or makes his declaration of intention. An alien will apply for first papers, and he will give incorrectly the date of his arrival, and give his age as eighteen or seventeen—for what purpose? So that he can sooner obtain his final papers. So that, gentlemen, this is a matter of great importance. If he produces, before the clerk who issues this declaration of intention, a certificate from the port of entry showing his age, the date of his arrival, and some description of him, then the clerk of the court, looking at that, the minute he asks these questions, can tell whether he is answering falsely or correctly. Then again, gentlemen, it will save substitution, because we will have a description. When these aliens come in, as they do every day, and say, "I have lost my declaration of intention, will you give me another one?" the clerk will at once refer to this certificate. He can refer to that, and from the description and from the answers to the questions that are put to him he can see whether the man who originally obtained this declaration of intention has really lost it, or whether the man before him is somebody else coming in and trying to get a declaration of intention under the name of another person, which is done every day.

So that provision is for identification, and to enable the clerk of the court to see whether the applicant, when he is being examined for the purpose of issuing to him his first papers, is telling the truth or not.

Mr. MARX. If the gentlemen of the committee have no objection, I will break in wherever a suggestion has been omitted.

Mr. GOULDEN. This is Mr. Marx, gentlemen, special assistant United States attorney, who had charge of these cases.

Mr. MARX. As the time is so short, it might perhaps be better if I would break in wherever Mr. Houghton forgets any particular point, and that will save a subsequent statement on the subject.

With regard to this question of identification by means of a certificate from the Commissioner of Immigration, that certificate will absolutely and correctly give the age of the immigrant, because in all foreign countries except England, in such countries as Italy, the country that we have mainly in view, no man can leave without obtaining a passport, and of course the passport is issued on the certificate of his birth, and certain other papers; so that when he comes to the port of New York he has in his possession a passport which correctly gives the date of his birth.

Consequently, at the first step in his process of becoming a citizen, we have the correct date of his birth; so that when we ask the Commissioner of Immigration to take the date from his records (we practically do that by compelling the man, before he can file his declaration of intentions, to produce this certificate of the Commissioner of Immigration), we have on record the correct date, not from the man's memory, not as he and his friends would wish us to have it, but as it actually appears from the certificate of his birth at the place where he was born in Italy. In that way, by means of this certificate, we know exactly the date on which the man was born; and no man can then say that he arrived in the United States under the age of 18 if such was not the case. That is the object of the certificate, in addition to furnishing the description of the alien, which prevents any possibility of any mistake being made as to his age at the time of arrival.

You will note that there is a further qualification there in regard to the counter signature of the final paper. That really comes in later, but it might, perhaps, have a place here, and might be an additional security against the possibility of these declarations of intention being improperly issued to two or three people using the same piece of paper. While that would, perhaps, be something of a hardship if a man has only been a year or six months in the country, it is still a protection, through the commissioner's certificate, against the man's misrepresenting his age, because his first declaration would then be followed right through to his final papers.

Mr. HOUGHTON. Paragraph 5 is based upon the old law, with the exception that in the old law, in addition to the oath of the applicant, his residence must be proved by one witness, a citizen of the United States. I have put in here "two citizens," for this reason:

Of course when an applicant appears in court finally, he as well as his witness is subject to examination as to his qualifications to obtain his second paper. The judge, by examining two witnesses instead of one, will obtain the truth of the residence of an applicant much better than with one. One witness may be primed; the applicant may be primed as to what he will say when he is produced before the court. But you can readily see that if there are three persons—that is, the applicant and two witnesses—when they appear in court and are subjected to the examination by the court as to the right of the alien to obtain the paper, the danger of swearing falsely is made much less, because it is not probable that three persons, the alien himself and his two witnesses, could so swear falsely that the judge before whom the application is made would not detect it. It is simply as a matter of precaution that I have put that in, so that the examining judge can see, from the mouths of three persons—that is, the applicant and the two witnesses—whether or not the applicant himself is entitled to the certificate of naturalization.

Then it goes on practically the same as the old section. I will say that here on page 4, line 8, there is a typographical error. After the word "affidavit" it should read "by two citizens of the United States," should you decide to allow that to remain in.

Mr. MARX. Right on that point, Mr. Houghton, one thing has been forgotten. There is a change in this language, "the oath of the applicant shall in all cases be required to prove his residence," etc. That is in line 6, page 4. The old act is practically the same thing, except that the old act says that "the oath of the applicant in all cases shall not be proof of the facts required," and on that account the courts held that those oaths were extrajudicial, because not required or not efficient under the statute. Consequently, in order to get around a certain decision in the Federal courts in 30 Federal Reporter, we have changed the language of the statute. The old language was, I think, "But the oath of the applicant shall in no case be allowed to prove his residence." We have changed that so as to make it an affirmative provision, "The oath of the applicant shall in all cases be required," thus making it a judicial oath. Consequently, if there is any falsity in the oath, it can be punished.

Then, in addition to that, an affidavit by two citizens of the United States corroborating the oath of the applicant is required. That, in conjunction with the previous paragraph (paragraph 2) makes falsity in that affidavit punishable as perjury in the United States court, which at present it is not. That was rendered necessary by the decision in the Gottskrau case, in 30 Federal Reporter. I have not the page of that case, but it might be interesting to look it up, for you will find it annotated right down to this very last case. That was really the foundation of the first decision, which led up to the decision that the United States courts have no jurisdiction; and the State court having none, the culprit can go.

I might say right here (if you will allow me to digress) that while we have not yet reached the conclusion of the cases we have endeavored to indict these witnesses for aiding and abetting in the obtaining of certificates of citizenship by fraud and false testimony, and I really think that in that I will succeed. So far no demurrer has been interposed to the indictments, and I think that when we get to the final point the circuit court of appeals will sustain our contention; but while we are amending the law, we might as well make it perfect and not be required to go to the courts and ask them to give us an interpretation to help us out.

Another thing following that very paragraph, which has perhaps slipped Mr. Houghton's mind for the minute, because he did not have it marked, is this——

The CHAIRMAN. Gentlemen, I am sorry to call your attention to it, but we have not the permission of the House to sit after 12 o'clock.

Mr. MARX. Can I have just about five minutes?

The CHAIRMAN. Yes; we will extend the time.

Mr. MARX. Because this is the gist of the whole thing.

The CHAIRMAN. Well, go right along.

Mr. HOUGHTON (to Mr. Marx). Go right ahead and say whatever you have in mind.

Mr. MARX. This is the gist of the whole bill.

Mr. HOUGHTON. Yes; right here.

Mr. MARX (reading from page 4 of the bill). "All the proceedings required in this condition to be performed in the court shall be recorder by the clerk thereof, and the said applicant at the time of making his application as aforesaid shall file with the clerk of the court, to be made part of the proceedings required herein, a certificate from the collector of the port at which said alien arrived., or from the commissioner of immigration of said port, as the case may be, showing his age, date of arrival, port of entry, the steamer by which he arrived, and a physical description of the applicant, which shall be countersigned by the said applicant in the presence of the officer who issues the same, who shall attest the same."

Now, gentlemen, that is this bill. Of course, this bill is practically the old law as it stands, with this addition, which cures all of the defects we have found. The other parts of the bill simply carry out this one general idea. Now, the idea of that is this:

First, every immigrant has his record at Ellis Island, when he lands. Of course that record as it stands now is in a jumbled condition. When we wish to trace it back, as we do in these prosecutions, if a man tells us he arrived on a certain date by a certain steamer, we can get the manifest of that steamer; but if he tells us a lie by one day, or gives us incorrectly the name of the steamer, we never can find it out, because there is no index and nothing by which we can prosecute our search.

Now, you can see how different it would be if, before the applicant can get his first papers, his declaration of intention, he must produce his certificate of landing from the Commissioner of Immigration—a fee for which is provided here, so as to reimburse the Commissioner for having an additional clerk to assist in this work. We do not provide for the additional clerk in this bill, because we were ignorant of the exact method of providing for new officers under these bills.

That is something that we have had no experience with; but there is a fee provided for issuing this certificate. Now, then, if we have this certificate when the man makes his declaration, we have filed in court a statement showing his age at the time of arrival, which prevents him from subsequently stating that he arrived at an earlier age

than he actually did. That accomplishes one thing. Then, in order to prevent that same alien from taking his declaration of intention, getting two or three duplicates, and using those duplicates to get licenses for his various friends, we have this qualification that he shall countersign in the presence of the officer issuing the certificate; and that countersign goes through the entire bill up to the date of his naturalization; and it is provided in the bill that he shall countersign his final papers in the presence of the officer of the court granting the certificate of naturalization. So that by that means we have the counter signature, we have the signature of the applicant from the very minute he takes his first step in his process of becoming a citizen of the United States, and then we have the clerk of the court having each preceding paper before him before another paper is issued; and in that manner there can be no impersonation and no fraud.

That is the point of this provision.

That brings us back to the argument which I heard while I was sitting here, as to the educational qualifications of immigrants; and of course that is an open question, I admit. But in the United States, where citizenship is rapidly increasing in value, I think our citizenship should be worth something.

Mr. BONYNGE. You provide that the applicants must be able to write their names?

Mr. MARX. Well, if the man has any intelligence, the first thing he will do is to learn to write his name, and if he has no intelligence he can be taught to write his name, if he has enough brains to be willing to study for, say, a month. Consequently, we do not go as far as this bill that was discussed before we arose.

We do not compel the immigrant to have an educational qualification, but we compel him to have enough intelligence to be able to learn to write his name before he declares his first intention to become a citizen. And if citizenship in the United States is to be held so cheap that to attain it a man will not take the trouble to go to a school for a few weeks and learn to write his name, which we require as a safeguard to prevent fraud, then I say that man is not entitled to become a citizen.

Mr. ADAMS. I know they are so kept now; but are the records of the Immigration Bureau in such shape that this man can get his data easily?

Mr. HOUGHTON. Yes.

Mr. MARX. Why, if this bill passes, I suppose it can only apply to future immigrants. The bill provides for certain fees. Of course the immigration is so large that they will amount to a hundred times more than will be necessary to pay for the clerk. Consequently the Commissioner would be in duty bound, in order to be able to comply with the law, to have a clerk, and to keep these things in tabulated form, or, rather, indexed according to names, or even according to the first, second, and third letters of the names, for we have so many hundreds of thousands of immigrants every year that it would be absolutely necessary to tabulate the names and arrange them alphabetically up to the third or fourth letter of the names before they can be referred to readily. Then the Government will have a vast amount of money on hand from this source.

Mr. HOUGHTON. I just want to say this: This is a safeguard against the issuing of duplicates or certified copies; because, let me tell you, gentlemen, that every single day in our courts there is a line of men that reaches from here to the street, three-fourths of whom are not going in there to get their final papers, but to get duplicates; and there is no way on earth for the clerk of the court, or any man connected with the court, to tell whether the person who applies for the duplicate is a person who originally applied or not. They issue those duplicates, and these aliens take these duplicates and not only use them for their friends in the city, but send them over to Europe and out into the country; so that persons who are not entitled to vote upon them do so—they and their sons, if they have sons. They do that, gentlemen; and this is to prevent that.

Mr. DOUGLASS. Why should they issue these duplicates?

Mr. HOUGHTON. They do it; and I want to tell you, gentlemen, that in our investigation in New York City we found that when these people would appear before the civil-service boards, as they have to do, to pass the examination so that they can obtain positions in the city department, sometimes out of 25 papers 12 would be fraudulent; out of 40 papers 20 would be fraudulent; and that is the way it has been going on. They would be fraudulent in one way or another, as I have mentioned; and there would be a great many of those duplicates, fraudulent duplicates.

Mr. MARX. Mr. Douglass asked why they issue those duplicates. You can go to the clerk's office, and if the clerk refuses to issue you a hundred duplicates of any naturalization paper on record, not your own, but anybody else's, you can get a mandamus and compel him to issue them to you. That is because a duplicate is simply a certified copy of a court record, and anybody in the world is entitled to a certified copy of any court record which is not sealed, as is done in divorce cases.

Consequently this will be the only exception upon the statute books, and the clerk is authorized by law not to give a duplicate to anybody who can not countersign similarly to the signature upon his records. That is an absolute safeguard. Of course, we will admit that this law, as amended, is not perfect. We are working on these naturalization frauds, and we expect to take, perhaps, a year before we halfway clean up the citizenship of the United States and get rid of these fraudulently naturalized citizens. It will take us, perhaps, about a year. During that year we will live and learn, and by the time we get through cleaning them up we will know more precisely what is needed in this line. Yesterday we convicted two men, and sent one of them away on the spot for two years; the day before we sent about seven of them to the Kings County Penitentiary; and we have about fifty more to dispose of to-morrow and the next day and Friday. We hope to send them away for varying terms, and in that way we expect to prosecute, perhaps, fifteen hundred people in the city of New York during the next year, and so inflict the punishment upon the general community that they will not forget it for some time to come. But there will be a time when they will forget it, unless the law is safeguarded.

Mr. GOULDEN. Do these abuses prevail elsewhere?

Mr. HOUGHTON. Oh, yes; all over the country.

Mr. MARX. I had a case referred to me for investigation by the Department of Justice, it having been sent to the Department of Justice from the Department of State, where it was "up to" a judge in the State of New York, in one of the upper counties. After my investigation was completed the judge admitted that he was careless; and I told him that I thought he was almost criminally careless, but under the circumstances I was willing to consent to the cancellation of the certificate, and let it go at that. The Department was satisfied to have that course taken, because there was a possible element of doubt as to good faith on the part of the judge, and it was thought that a conviction would not lie. We, therefore, did not think we ought to smirch a man's character under such circumstances, especially as the man had been highly vouched for, and had only been on the bench about a year. But that is the situation all through the State of New York.

Mr. GOULDEN. Were many of these certificates sold?

Mr. HOUGHTON. Oh, a great many; and they have paid up to $65 for them.

Mr. MARX. Every man that has been arrested has admitted sales amounting to a hundred; and when a culprit admits that he sold a hundred the probabilities are that he sold a thousand. They have sold them from $12 as the minimum price up to——

Mr. HOUGHTON. Sixty-five.

Mr. MARX. I have had a bunch of them at $50.

Now, it does not stop at the State of New York. The Armenians do it up in Rhode Island. They have been prosecuted. The authorities there have endeavored to stop it. The trouble is that some of the clerks of the courts are in collusion with these people; I will admit that.

Some of the county clerks in the State of New York are willing to close one eye in these cases, because in that manner they are able to sell these papers; they sell these poor devils "red, white, and blue papers," as they call them, with a little ornamentation, a red, white, and blue American flag on them, and charge them $2.50 instead of a dollar. That extra dollar and a half goes into the county clerk's pocket. All that is stopped by this provision; and it prevents the possibility of these fellows walking up like a bunch of sheep and simply handing in their two dollars and a half and getting a paper whether they are entitled to it or not.

Mr. HOUGHTON. Now, gentlemen, General Burnett's letter to Mr. Goulden, which I dictated, explains the rest of these paragraphs.

Mr. GOULDEN. I am going to submit that.

Mr. HOUGHTON. The one in reference to giving power to the district attorney to summon witnesses is especially important.

Mr. MARX. If the gentleman will wait for just a moment on that one point——

Mr. BONYNGE. What is the point?

Mr. MARX. This is a new paragraph, which gives the district attorney power to subpœna all citizens of the United States for examination in the event of suspicion as to the genuineness of their papers.

Mr. ADAMS. What page is it on?

Mr. MARX. Page 7, paragraph 11. In the State of New York we do not need that law, because we have a superintendent of elections who is authorized by statute to subpœna all witnesses. This paragraph is copied from the State law, I believe, and is practically the same as the State law. We simply go to the superintendent of elections, and so long as he is in sympathy with this movement he subpœnas any voters whom we ask; and under the stress of that subpœna they are examined, and we can ascertain from their admissions whether their papers are genuine or not.

But outside of the State of New York, there is not any such law, and as this prosecution is going to continue, starting from New York as the center we are going to work westward; we are going up to Troy, then out to Buffalo; then we are going to work our way to Chicago and St. Louis, and go right to the coast and back, and clean up the citizenship throughout the United States. We need some such provision outside of the State of New York. We do not care for it for the State of New York, because we have that power there as long as we have a superintendent of elections who is willing; but outside of the State we need it very badly.

There is no law now in the United States permitting us to use the testimony of a person convicted of a crime. In the case that I referred to in the beginning, against the clerk of the court, we were obliged, because we had no law permitting us to use the testimony of a person convicted of a crime, to pardon five of these parties who had been implicated in naturalization frauds.

Mr. ROBB. You say that a man who is convicted of a crime can not testify?

Mr. HOUGHTON. He can not testify—not in the United States courts.

Mr. ROBB. Then there was a very grievous error in the prosecution of those cases in St. Louis.

Mr. MARX. That was under a State law, was it not?

Mr. ROBB. They were prosecuted in the Federal courts.

Mr. HOUGHTON. You can not do it in the Federal courts.

Mr. ROBB. These men were taken out of the penitentiary and sent down there to testify, and they were afterwards pardoned on the testimony given.

Mr. MARX. Counsel for the defense did not raise the objection then.

Mr. ROBB. A very able judge tried the case I know.

Mr. MARX. Well, he did not raise the objection; he may not have understood the point.

Mr. HOUGHTON. But it can not be done under the United States law.

Mr. BONYNGE. They pardoned them afterwards, you say?

Mr. ROBB. Yes; they pardoned them afterwards.

Mr. HOUGHTON. They can not do it under the United States law, and in the State of New York there is a provision to that effect; so, as I say, that point was raised on us.

Mr. BONYNGE. Which is your section, please?

Mr. HOUGHTON. Section 8, page 13. I have therefore put a section in there which so provides that we will not have to pardon persons convicted of a crime when we wish to use them to give evidence and trace out the line of a crime. Many a time we have to use a person convicted of a crime; and, as I say, in this case where we have had the clerk of the court on trial, we had to pardon five persons, because each one was a necessary link in proving our case and corroborating others. So that that is a very important section to be passed.

Mr. MARX. I would like to say just one word in conclusion——

The CHAIRMAN. I think we will have to adjourn here, gentlemen.

Mr. MARX. Just one minute, Mr. Chairman; it will not take me one minute. I want to say this—that during this year we will be learning more about this naturalization law; and if the bill in its present state is passed, and a commission, say of lawyers, is appointed to revise the naturalization laws between this session and the next session of Congress, we will then be in a position to get up an absolutely perfect naturalization bill.

After consultation with the President, Attorney-General, and the Secretary of Commerce and Labor, I introduced a joint resolution in lieu of the bills named, providing for the appointment of a commission of three to investigate the whole matter and to report a measure that would remedy the evils and simplify matters. This resolution was reported from the committee,

carrying with it an appropriation of $5,000 for the actual necessary expenses, but met with the opposition of the Speaker; hence failed being enacted into law.

The President, realizing the importance of the matter, however, named a commission consisting of three, one from the Attorney-General's office, one from the Department of Commerce and Labor, and one from the United States Treasury. This commission made a thorough examination, and two reports have been made, from which the committee, in the wisdom of its members and with some additions, have brought in by a unanimous vote bill No. 15442, now under discussion. It is a comprehensive measure, embodying the salient points of House bill No. 12762, introduced in 1903, and reintroduced in the present Congress in December, 1905, by myself, and known as No. 8424. [Applause.]

It is made up of thirty-two sections and, taken as a whole, seems satisfactory, except that portion of section 9 requiring an alien to be able to read, speak, and understand the English language. I would favor an amendment to strike that out, as the other portion of this section is sufficient to afford the proper protection to the sanctity of the ballot. I shall offer an amendment later striking out this clause, or at least these words, on page 9, section 9, line 24, "read" and "understand." The fees having been reduced by the committee, I have no objections to that section. If I had any other criticism to make, it would be that the bill is not drastic enough in its punishment of the crimes against the laws entitling aliens to the great boon of American citizenship. No one not familiar with the subject could possibly realize the extent of the evils and the dangers attending this matter of assimilating the alien into our body politic and making citizens that are to help us guard and advance our glorious free institutions. This bill will do much to stop fraud and to help purify the atmosphere in the matter of naturalization. It is therefore entitled to our favorable consideration. [Applause.]

Mr. BONYNGE. Mr. Chairman, I yield ten minutes' time to the gentleman from Indiana [Mr. CRUMPACKER].

Mr. CRUMPACKER. Mr. Chairman, the dominant purpose of the bill under consideration is to protect American citizenship against the fraudulent naturalization of aliens, and incidentally to impose additional qualifications on the right to become a citizen. The bill, in the main, is a good one. It contains a number of wholesome safeguards against fraudulent naturalization, and it provides for the cancellation of certificates of citizenship that have been procured through fraud and perjury.

In my opinion naturalization laws should be rigidly protected against fraud and imposition, and, on the other hand, they should be fairly liberal, so that practically all of the people who come from foreign countries to permanently identify themselves with us may be enabled to become citizens and share the privileges and immunities of citizenship and be required to assist in bearing the burdens of government and contributing toward its defense. I conceive it to be a very unwise policy for this or any other country to permit a substantial number of aliens to live permanently within its borders without enjoying the rights and bearing the responsibilities of citizenship. Our scrutiny and care ought to be directed, in the main, to the admission of aliens at our ports, in the first place. Our policy should be to admit no alien into this country for permanent residence whom we do not believe at the time of his admission will become fitted for ultimate citizenship, and I express the hope that at an early day Congress will enact a law imposing more rigid restrictions upon immigration. I do not mean to be understood as favoring such restrictions as will keep from our shores men of foreign birth who will thoroughly identify themselves with our civilization and our system of Government. This country owes much of the splendid condition it enjoys to-day to the contributions made toward its general advancement by men of foreign birth, and it has always been the policy of the Government to be liberal in admitting those from foreign countries whose presence here will tend to promote the general upbuilding of our civilization.

Some criticism might justly be made against the provision in the bill requiring a preliminary declaration of intention before ultimate citizenship can be granted. The bill provides that the preliminary declaration must be made not less than two nor more than five years before the final application for citizenship. In order to secure citizenship the applicant must be free from certain objectionable qualities described in the bill, and he must be able to read and understand the English language. In his preliminary declaration he is not required to possess the educational qualifications. By his declaration of intention an alien severs his allegiance to his foreign sovereign, and still he does not become a citizen of the United States. If he shall finally be unable to secure citizenship, he will be altogether without a sovereign to look to for protection in exigencies that might possibly arise. He will be a man without a sovereign. Of course an alien who lives in this country with the permission of this Government is bound to yield a temporary and qualified allegiance to the Government, and, on the other hand, the Government is obliged to secure to him a correspondingly qualified protection, but he is not a citizen. Many of the rights and privileges of citizenship, such as the ownership of land and the inheriting of property, denied in many of the States to aliens, do not belong to him. In my judgment, Mr. Chairman, it would be better to have no preliminary declaration of intention at all. The commission appointed by President Roosevelt a short time ago to investigate the subject of naturalization, in its report submitted to Congress last December, recommended the abolition of the declaration of intention. This country and Mexico are the only countries that require a preliminary declaration as a condition precedent to citizenship. The bill provides adequate means to ascertain the identity of an applicant for citizenship; so the preliminary declaration can subserve no useful purpose, and it may in some instances work an irreparable hardship. In the States of Arkansas, Indiana, Kansas, Michigan, Missouri, Nebraska, Texas, Oregon, and Wisconsin an alien may vote upon complying with the State laws, after having made his preliminary declaration to become a citizen of the United States. Under possible exigencies of American politics the election of a President and Vice-President and the determination of the policies of the Government might be determined by the votes of aliens. In all the other States no person is allowed to vote who is not a citizen of the United States. If the preliminary declaration of intention should be dispensed with, no alien could vote in the nine States I have mentioned. Sir, I believe the election laws ought to prevent anyone from participating in elections in this country until he has become a citizen of the United States.

There have been numerous frauds committed against the naturalization laws, chiefly in the large cities of the country. These frauds have been induced in the main by the desire to vote, to secure protection abroad, and to secure rights and privileges under the labor laws of some of the States and municipalities, which prevent anyone who is not a citizen of the United States from being employed in any public work. An alien who has declared his intention to become a citizen and yet can not comply with the requirement that he shall read and understand the English language in order to consummate his citizenship is denied employment in any kind of public work in a number of the States and cities. I have been informed that the State Department has considered a possible modification of treaties with foreign countries in order that immigrants from those countries may be entitled during their sojourn here to all the privileges and immunities of citizenship in so far as industrial rights are concerned. It would, in my judgment, be of very doubtful propriety for the Government to enter into treaties of that character. It would most likely excite deep feeling and hostility on the part of States and municipalities.

I desire to call the attention of the House especially to the abuses that grow out of the right of protection of naturalized citizens in foreign countries. A great many aliens come to this country, remain long enough to comply with the naturalization laws and secure certificates of citizenship, then return to the country of their nativity, take up permanent residence therein, and claim protection of the United States as American citizens. Many fraudulent certificates of citizenship have been issued to this class of aliens. Many certificates that are pure forgeries have been sold and claim has been made thereunder for the protection of this country in foreign lands. Abuses have become such that it is a constant source of embarrassment and irritation between the United States and certain foreign governments.

It is the policy of our laws to issue passports to all citizens who desire to travel abroad and to protect naturalized citizens in foreign countries to the same extent as native citizens are protected. The laws of the country and the policy of the Government have made absolutely no distinction between native and naturalized citizens either at home or abroad, and they should make no distinction. When an alien becomes a citizen of the United States in good faith he is entitled to all the privileges and immunities of citizenship wherever he may rightfully be, whether at home or abroad, but if an alien comes here with the intention of remaining only long enough to become naturalized and then to go to a foreign country for permanent domicile and claim the protection of this Government, it is a fraud not only against the United States, but it would be a fraud against the country to which he went to live.

In all of the non-Christian countries, excepting Japan, and in some semibarbarous countries the United States, under spe-

cial treaties, secures to American citizens living in those countries the right to be tried upon criminal charges, not under the laws and in the courts of those countries, but in American consular courts in accordance with American law and usages. This is what is called "the policy of extraterritoriality." It is the boast of this Government that it adequately safeguards the rights of citizens who are on trial for life or liberty, and the fact that these safeguards may be carried by American citizens into foreign countries where the rights and privileges of the individual are not so sacredly considered, is a privilege of inestimable value, but it is designed only for real American citizens.

A considerable number of our foreign-born population secure passports to foreign countries within a few months after they become citizens, and many of them never return to the United States and never expect to return when they leave this country bearing with them certificates of American citizenship. A great deal of irritation has been created, particularly in parts of Turkey, by subjects of that Empire who have come to America and gotten certificates of naturalization, returned there as permanent residents, and claimed protection of the American Government. Serious international troubles may possibly arise from this situation, and it is highly important that the Government protect itself as far as possible against this source of fraud and danger. It is said that there are over a thousand natives of Turkey who are permanently residing in the city of Jerusalem at this time who hold certificates and passports as American citizens and who claim the rights of American citizens in the country of their origin under the provisions of existing treaties. The Commission on Naturalization, speaking of this class of men, said:

> It appears from the records of the passport bureau of the State Department that approximately 16 per cent of the naturalized citizens who apply for passports are naturalized within six months of the date of their application—that is to say, they are naturalized, it is fair to assume, after they have determined to go abroad. Living in this country as aliens, they avoid the responsibility and duties of citizens; going abroad, they secure one of the highest privileges of citizenship—that of protection in case of need while in a foreign state. Some of them have come to the United States for no other purpose than to escape the duties of citizenship in their parent state and remain here only long enough to become naturalized as American citizens, when they leave our jurisdiction.

President Grant, in 1869, in his first annual message to Congress, in discussing this class of people, said:

> They reside permanently away from the United States; they contribute nothing to its revenues; they avoid the duties of citizenship, and they only make themselves known by a claim for protection.

Legislation has been repeatedly recommended by various Presidents that would authorize the State Department to relieve the Federal Government from the embarrassment of dealing with this class of individuals. The trouble is not confined to aliens who return to the country of their nativity, but many aliens secure naturalization under our laws, obtain American passports, and go to countries in the West Indies to carry on business, to live permanently, and claim protection as American citizens there.

Abuses of the rights of citizenship came to be so grievous and a cause of so much trouble to the Government that some years ago the State Department, without express authority of law, issued instructions to American diplomatic and consular representatives in foreign countries that where one born abroad had obtained naturalization under our laws and had returned to the country of his origin or to any other foreign country and taken up a permanent domicile and continued to remain therein for a period of five years, with no apparent intention of returning to the United States, that the protection accorded to American citizens should be withdrawn from him.

Citizenship is conferred upon aliens with the implied understanding that they are to become permanent residents of the United States, and for the rights and privileges they receive by virtue of their acquired citizenship they are in duty bound to yield allegiance to this Government, to contribute toward its maintenance, and assist in its defense. The class of individuals to which I have referred voluntarily expatriate themselves, and for all practical purposes become foreigners. They put themselves in a condition where they contribute absolutely nothing toward the maintenance of our Government. They can not be called upon to assist in its defense. By virtue of every principle of equity and fair dealing they have forfeited the right to claim protection from this Government.

Under the law as it exists at this time an applicant for citizenship is not required to state or prove that it is his intention to become a permanent resident of the United States if he shall become a citizen. The court granting citizenship may be apprised of the fact that it is his intention to permanently absent himself from the country and yet the right must be granted. One of the most salutary features of the bill under consideration is that it requires an applicant for naturalization to solemnly swear that it is his intention to become a permanent resident of the United States if citizenship shall be granted to him.

Section 17 of the pending bill contains provisions for the cancellation of fraudulent certificates of citizenship. If any alien shall impose upon the court by perjured testimony, or if a certificate has been issued in violation of law, the bill makes the certificate invalid and authorizes proceedings in any court of competent jurisdiction to cancel the certificate of citizenship, and notice of cancellation shall be sent to the Department of Commerce and Labor and duly recorded. Naturalization is a privilege of great value, and proceedings to establish it ought to be solemnly and rigidly observed. The boon of American citizenship must not be cheapened by lax and unconventional methods of courts and public officers who administer the law, but once granted it should endure for all time. It is conferred by the Federal Constitution and by laws authorized by the Constitution. When citizenship is once legally granted, of course it can not be invalidated, and it ought not to be, but no one questions that it is within the power of the Government to provide for the cancellation of certificates of citizens that have been fraudulently obtained. A certificate tainted with fraud is in the sense of the law no certificate at all.

When the time comes for proposing amendments to the bill, I intend to offer an amendment providing in effect that where an applicant secures a certificate of citizenship under the present bill, if it should become a law, and within five years after securing his certificate returns to the country of his nativity or goes to any other foreign country and takes up a permanent domicile therein, it shall be regarded as prima facie evidence of a lack of intention on his part to become a permanent resident of the United States at the time he applied for and obtained his certificate of citizenship, and in the absence of other evidence it will be sufficient to justify the court in a proper proceeding to cancel his certificate as fraudulent. The bill provides for cancellation of certificates of citizenship upon constructive notice where the holder of such certificate is out of the United States. I have no doubt of the power of Congress to make such provision. Citizenship is a status, and the cancellation of the certificate does not operate as a judgment in personam, but as a judgment in rem. The decree canceling a certificate simply operates upon a status that the holder of the certificate has obtained in this country, under its laws upon fraudulent representation; for instance, upon the representation that he intended to become a permanent resident of this country, when, in fact, he did not.

If this amendment should be adopted, it would afford a great deal of relief to the Government against the troublesome claims of holders of spurious certificates abroad. It will not altogether cure the evil, for an alien might reside in this country for five years to secure citizenship and might continue to reside here for five years after having secured it and then go abroad and permanently expatriate himself from this country and claim protection from this Government; but if it was understood that it required a residence in this country of at least ten years—five years before citizenship and five years afterwards—to enable the holder to secure the protection of American citizen in his permanent residence abroad, there would be little inducement for such people to attempt frauds against the naturalization laws of this country for such purpose. Of course citizens of the United States, whether native or naturalized, who are in foreign lands, on business or for pleasure or health, for any length of time do not and should not forfeit protection as citizens. The amendment I propose is aimed chiefly at the class of aliens who come here for the sole purpose of securing citizenship to be used abroad to protect them against the impositions and exactions of foreign countries where they intend to permanently live.

The effect of the amendment will not be to decitizenize an American citizen nor to take from a citizen any of his rights as such. It simply provides a rule of evidence by which courts may, in the absence of contrary proof, infer a fraudulent design on the part of the holder of the certificate in the first instance to secure citizenship for improper purposes. Fraud vitiates all proceedings and can be the basis of no right in law. It is in line with the theory of section 17 of the bill, and I am sure that its adoption would afford much relief to the country in a direction where some specific remedy is badly needed.

I will print in the RECORD as an appendix to my remarks a circular letter by the State Department to the diplomatic and consular officers of the United States on March 27, 1899, respecting the rights of holders of American passports in foreign countries.

The CHAIRMAN. The time of the gentleman has expired.

Mr. NORRIS. Mr. Chairman, I ask unanimous consent that the gentleman's amendment may be read now for the information of the committee.

The CHAIRMAN. Is there objection to the amendment of the gentleman from Indiana being read at this time for the information of the committee?

There was no objection.

The Clerk read as follows:

Insert after line 25 on page 16 the following:

"If any alien who shall have secured a certificate of citizenship under the provisions of this act shall, within five years after the issuance of such certificate, return to the country of his nativity, or go to any other foreign country, and take permanent residence therein, it shall be considered prima facie evidence of a lack of intention on the part of such alien to become a permanent citizen of the United States at the time of filing his application for citizenship, and, in the absence of countervailing evidence, it shall be sufficient in the proper proceeding to authorize the cancellation of his certificate of citizenship as fraudulent, and the diplomatic and consular officers of the United State in foreign countries shall from time to time, through the Department of State, furnish the Department of Justice with the names of those within their respective jurisdictions who have such certificates of citizenship and who have taken permanent residence in the country of their nativity, or in any other foreign country, and such statements, duly certified, shall be admissible in evidence in all courts in proceedings to cancel certificates of citizenship."

PASSPORTS FOR PERSONS RESIDING OR SOJOURNING ABROAD.

DEPARTMENT OF STATE,
Washington, March 27, 1889.

To the diplomatic and consular officers of the United States.

GENTLEMEN: It has been represented to the Department that a greater uniformity than now prevails is desirable in the treatment of applications for passports from persons who allege American citizenship and who have been absent from the United States for a prolonged period and are unable or refuse to give a definite promise of return. Diplomatic officers and consular officers having authority to issue passports will, therefore, follow the general principles of this instruction; but wherever a doubt arises as to the propriety of issuing or withholding a passport, they will communicate all the facts of the case to the Department and await its instructions.

This Government does not discriminate between native-born and naturalized citizens in according them protection while they are abroad, equality of treatment being required by the laws of the United States. (Secs. 1999 and 2000, R. S.) But in determining the question of conservation of American citizenship and the right to receive a passport it is only reasonable to take into account the purpose for which the citizenship is obtained. A naturalized citizen who returns to the country of his origin and there resides without any tangible manifestation of an intention to return to the United States may therefore generally be assumed to have lost the right to receive the protection of the United States. His naturalization in the United States can not be used as a cloak to protect him from obligations to the country of his origin while he performs none of the duties of citizenship to the country which naturalized him. The statements of loyalty to this Government which he may make are contradicted by the circumstance of his residence, and are open to the suspicion of being influenced by the advantages he derives by avoiding the performance of the duties of citizenship to any country. It is not to be understood by this that naturalized American citizens returning to the country of their origin are to be refused the protection of a passport. On the contrary, full protection should be accorded to them until they manifest an effectual abandonment of their residence and domicile in the United States.

A passport is in its terms a statement that the person it names and describes is a citizen of the United States, and it is forbidden by law to issue one to any other than a citizen of the United States. (Sec. 4076, R. S.) The Secretary of State, and under him our diplomatic and consular officers, with certain restrictions, may grant and issue passports under such rules as the President prescribes. (Sec. 4075, R. S.) As a general statement, passports are issued to all law-abiding American citizens who apply for them and comply with the rules prescribed, but it is not obligatory to issue one to every citizen who desires it, and the rejection of an application is not to be construed as per se a denial by this Department or its agents of the American citizenship of a person whose application is so rejected.

A condition precedent to the granting of a passport is, under the law and the rules prescribed by authority of the law, that the citizenship of the applicant and his domicile in the United States and intention to return to it with the purpose of residing and performing the duties of citizenship shall be satisfactorily established. One who has expatriated himself can not, therefore, receive a passport.

Expatriation has been defined by Mr. Hamilton Fish as "the quitting of one's country with an abandonment of allegiance and with the view of becoming permanently a resident and citizen of some other country, resulting in the loss of the party's preexisting character of citizenship." Thus, a person "may reside abroad for purposes of health, of education, of amusement, of business for an indefinite period; he may acquire a commercial or civil domicile there, but if he do so sincerely and bona fide animo revertendi, and do nothing inconsistent with his preexisting allegiance, he will not thereby have taken any step toward self-expatriation. But if, instead of this, he permanently withdraws himself and his property and places both where neither can be made to contribute to the national necessities, acquires a political domicile in a foreign country, and avows his purpose not to return, he has placed himself in the position where his country has the right to presume that he has made his election of expatriation." There being no legislative definition of what constitutes expatriation, it is a fact to be determined by the circumstances surrounding each case that arises.

But even where expatriation may not be established, a person who is permanently resident and domiciled outside of the United States can not receive a passport. "When a person who has attained his majority removes to another country and settles himself there, he is stamped with the national character of his new domicile; and this is so, notwithstanding he may entertain a floating intention of returning to his original residence or citizenship at some future period, and the presumption of law with respect to residence in a foreign country, especially if it be protracted, is that the party is there animo manendi, and it lies upon him to explain it." (Mr. Fish to the President, For. Rels. 1873, 1186 et seq.) If, in making application for a passport, he swears that he intends to return to the United States within a given period, and afterwards, in applying for a renewal of his passport, it appears that he did not fulfill his intention, this circumstance awakens a doubt as to his real purposes, which he must dispel. (For. Rels. 1890, 11.)

The treatment of the individual cases as they arise must depend largely upon attendant circumstances. When an applicant has completely severed his relations with the United States; has neither kindred nor property here; has married and established a home in a foreign land; has engaged in business or professional pursuits wholly in foreign countries; has so shaped his plans as to make it impossible or improbable that they will ever include a domicile in this country—these and similar circumstances should exercise an adverse influence in determining the question whether or not a passport should issue. On the other hand, a favorable conclusion may be influenced by the fact that family and property connections with the United States have been kept up; that reasons of health render travel and return impossible or inexpedient, and that pecuniary exigencies interfere with the desire to return. But the circumstance which is perhaps the most favorable of all is that the applicant is residing abroad in representation and extension of legitimate American enterprises.

The status of American citizens resident in a semibarbarous country or in a country in which the United States exercises extraterritorial jurisdiction is singular. If they were subjects of such power before they acquired citizenship in the United States, they are amenable, upon returning, to the same restrictions of residence as are laid down in the beginning of this instruction, and for the same reasons; but if they are not in that category, their residence may be indefinitely prolonged, since obviously they can not become subjects of the native government without grave peril to their safety. The Department's position with respect to these citizens has uniformly been to afford them the protection of a passport as long as their pursuits are legitimate and not prejudicial to the friendly relations of this Government with the government within whose limits they are residing; and the Department has even held that persons who are members of a distinctly American community in Turkey and avail themselves of the extraterritorial rights given by Turkey to such communities may inherit their rights as American citizens, and that section 1993 of the Revised Statutes of the United States, which provides that "the rights of citizenship shall not descend to children whose fathers never resided in the United States," is not applicable, such descendants being regarded, through their inherited extraterritorial rights recognized by Turkey herself, as born and continuing in the jurisdiction of the United States. (For. Rels. 1887, 1125).

I am, gentlemen, your obedient servant, JOHN HAY.

The CHAIRMAN. Is there objection to the amendment of the gentleman from Indiana being read at this time for the information of the committee?

There was no objection.

The Clerk read as follows:

Insert after line 25 on page 16 the following:

"If any alien who shall have secured a certificate of citizenship under the provisions of this act shall, within five years after the issuance of such certificate, return to the country of his nativity, or go to any other foreign country, and take permanent residence therein, it shall be considered prima facie evidence of a lack of intention on the part of such alien to become a permanent citizen of the United States at the time of filing his application for citizenship, and, in the absence of countervailing evidence, it shall be sufficient in the proper proceeding to authorize the cancellation of his certificate of citizenship as fraudulent, and the diplomatic and consular officers of the United States in foreign countries shall from time to time, through the Department of State, furnish the Department of Justice with the names of those within their respective jurisdictions who have such certificates of citizenship and who have taken permanent residence in the country of their nativity, or in any other foreign country, and such statements, duly certified, shall be admissible in evidence in all courts in proceedings to cancel certificates of citizenship."

Mr. BONYNGE. Mr. Chairman, I now yield to the gentleman from Illinois.

[Mr. McGAVIN addressed the committee. See Appendix.]

Mr. GOLDFOGLE. Mr. Chairman, I now yield to the gentleman from California [Mr. SMITH].

Mr. SMITH of California. Mr. Chairman, I feel quite confident that this bill has been prepared with the subject of naturalization in the cities chiefly in mind. But applying it to the rural districts and the larger Territorial organizations of the West it seems to me it will work a very great hardship upon the class of foreigners who desire citizenship and against whom there is generally no objection. If the provisions in this bill were applied to the metropolis of San Francisco or Boston or New York I would not profess to know enough about the subject to discuss it, but I can see many hardships in the bill as applied to men working in the mines or in the lumber regions or on the ranches at a distance from the county seat. Under the law of California a person must be naturalized at least ninety days before election day. This bill provides that before he can be naturalized he must file his petition or his first papers in the matter ninety days before the final hearing—that is, six months, and it provides that at the time he files the original petition for naturalization he must have been in the State a year, thereby compelling a very large class of people through the West to be residents of the State for a year and a half before they can be naturalized. It provides again for the filing of a statement of such a complex nature that I am satisfied that at least a very large per cent of the people would make fatal errors in preparing such a statement if they were not assisted by an attorney.

Let us note briefly the procedure required by this bill for

gaining citizenship, having in mind a man who is not an attorney or one not accustomed to drawing papers:

First, he must make and fill in duplicate a petition in writing and duly verified, in which he states his name, residence, occupation, date and place of birth, the place from which he emigrated, date and place of arrival in the United States, and the name of the vessel on which he arrived; the time and place of declaring his intentions to become a citizen; if married, the names, ages, and birthplace of each member of his family. A somewhat lengthy statement as to his views and citizenship, polygamy, and his intentions as to remaining domiciled in the United States. Whether he has ever been denied naturalization, and if so, the cause, and show that that cause is now removed, "and every fact material to his naturalization, and required to be proved upon the final hearing of his application."

This long and technical petition shall be verified by two witnesses and who shall state in addition that they have personal knowledge that the alien has resided in the country five years, and in the State or Territory one year.

Preceding all this, the alien must have applied to the Department of Commerce and Labor and obtained a certificate of the time, place, and manner of his arrival in this country, and a copy of his "first papers," both of which must be filed with the foregoing verified petition. If he can not prove continuous residence by present witnesses, he may file depositions showing residence for part of the time, "upon notice to the Bureau of Immigration and Naturalization and the United States attorney for the district in which said witnesses may reside."

Each and all of these provisions appear to be jurisdictional. No wheel can turn until they have been complied with, and the bill does not seem to give the court any leeway in the matter of exercising the nonperformance of these multitudinous conditions. Certainly, here is a great deal of painstaking and technical work. How many aliens, remembering dates and our names of cities and courts but imperfectly, could comply with these demands? And what good purpose results from all of this circumstantiality? It will require the services of a pretty careful attorney to get all of these papers in shape, so as to give the court jurisdiction to hear the cause. And it should not be forgotten that the question of jurisdiction will follow this would-be citizen through all his vocations in life. If he be called to serve as a juror, grand or trial, or be called to serve the country in any civil or military capacity, or claims the protection of the flag which he thinks he has adopted, the legality of his naturalization will turn primarily upon the correctness of this apparently useless, but complex petition.

Petition being made and filed, the clerk gives ninety days' notice—a procedure of no practical value outside of half a dozen large cities—and sets the case for a "stated date" theretofore fixed by the rules of the court. If the alien is not present on the day fixed—and in large counties and among busy men it will very often be impossible for him to attend with his witnesses on a day fixed three months in advance—there is no provision for having the hearings continued, and, apparently, the whole proceeding would have to be begun over again.

It is clear to my mind, Mr. Chairman, that this procedure is entirely too complicated, that men who would make entirely satisfactory citizens will be deprived of the blessing of citizenship with no corresponding good in any other direction. I am willing to go a long way toward keeping undesirable foreigners out of this country, but substantially every one who should be permitted to come in should be permitted to enjoy the full blessings, privileges, and burdens of citizenship. If they are not fit to be citizens, let them be stopped at the gate of the nation. But having admitted them to our territory, no good will come from making naturalization complex and difficult. The provisions of this bill would work a great hardship on many miners, stockmen, and ranch men in my district, and I can not support it. [Applause.]

Mr. GOLDFOGLE. Mr. Chairman, I yield three minutes to the gentleman from Maine [Mr. POWERS].

Mr. POWERS. Mr. Chairman, I fully concur in what has just been said by the gentleman from California [Mr. SMITH]. I yield to no man in my desire that we should have no one admitted to citizenship but those who are capable of it and who will make good citizens. I believe that the first place where we should exercise the greatest care is in the admission of foreigners or immigrants, for I am a believer in the doctrine that this great continent of North America should belong to Americans, and that we should permit none to come here and settle who will not in process of time become worthy to share and uphold the blessings of this Republic. I have read this bill but cursorily, yet it seems to me that it does some things that are entirely uncalled for. I shall favor the amendment offered by the gentleman from Illinois [Mr. WHARTON] in reference to the reading and writing of some language, for I believe that there may be people who emigrate to this country after they are, say, 40 or 50 years of age and who have lived among their own people all the time—people speaking their language—who may not be able to read and write and speak the English language though they have resided in the country five years, and who yet would make good citizens. This bill requires that there should be furnished all the evidence, it seems to me, that is necessary, and more too, without the paragraph to which I wish to call attention. I find on page 9 a provision in the bill that, it seems to me, is entirely unnecessary and which will in many cases work a great hardship to many who may desire to become naturalized.

Commencing on line 17 there is the provision that at the time of filing his petition there shall be filed with the clerk of the court a certificate from the Department of Commerce and Labor, if the petitioner arrived in the United States since January 1, 1900, stating the date, place, and manner of his arrival in the United States, and the declaration or intention of such petitioner, which certificate and declaration shall be attached to and made a part of said petition. The previous sections of this bill make it necessary for him not only to declare, but to show by two witnesses who have known him intimately, that he has been here at least five years and will make a good citizen, loyal and well affected to the Government. I do not know, though there may be some such, of any statute by which every immigrant coming to this country is reported to the Bureau of Commerce and Labor and has been since 1890. Certainly I do know that there are many who would make excellent citizens that have come across the border from Canada, of which there is no record.

Mr. BONYNGE. Mr. Chairman, if the gentleman will yield to me for a moment, I will call his attention to the fact that that has been the practice since 1900, and by section 1 of this bill it is provided for by statute.

The CHAIRMAN. The time of the gentleman has expired.

Mr. GOLDFOGLE. Mr. Chairman, I yield one more minute to the gentleman from Maine.

Mr. BONYNGE. I call the attention of the gentleman to section 1 of the bill, which provides that he shall be given such certificate.

Mr. POWERS. Mr. Chairman, I wish to reiterate in reply what I have perhaps already stated, that there are a large number of immigrants coming to this country from the Dominion of Canada and from Mexico, and who have come here since 1890, of whom, I believe, there can not possibly be any record. Many of them would make the best citizens, and I think this section as it stands should be either amended or stricken from the bill.

Mr. GOLDFOGLE. Mr. Chairman, in the limited time remaining for general debate I will not have the opportunity to discuss as fully as I would wish the questions involved in the bill now before us. Whatever legislation may be necessary to safeguard our country against the commission of fraud in the naturalization of aliens ought to be enacted. To legislation that will tend to improve our naturalization laws, wherever within reason and fairness improvement can be made, there will be no objection. Every American citizen, whether native or foreign born, who desires to preserve in all their strength and greatness our American institutions would, of course, seek to keep up the excellent grade and quality of our citizenship and bring within its folds those who, being of good moral character, come to our shores with a bona fide intent to permanently dwell amongst us and to assimilate with the American people. While I congratulate the able and distinguished chairman of the committee, the gentleman from Colorado, who reports this bill, upon the arduous labor he has done and the able efforts and earnestness he has displayed in formulating the bill, I want to say that in my judgment there are several provisions in the pending measure that ought to be very much amended.

Looking at section 9 we find a provision that no alien shall hereafter be naturalized or admitted as a citizen of the United States who can not write in his own language or in the English language, and who can not read, speak, and understand the English language. In other words, it is proposed by the gentleman from Colorado that not only must the applicant be intelligent enough to read and write in some of the recognized languages, but he must be able to read, to speak, and to understand the English language too. The distinguished chairman of the committee is always guided by such a sense of fairness and impartiality that were he upon the bench of a court having power to naturalize he probably would give to the pro-

posed educational-test clause a liberal interpretation. But all judges are not alike—they do not think alike—and in the construction of laws and in the administration of them their views frequently differ widely.

Now, Mr. Chairman, there is no standard provided in the bill by which the judge who may be called upon to naturalize may determine the extent of the understanding of the English required of the applicant or of the applicant's English speaking and reading ability or capacity. As this bill is now framed, we are asked to confer, in connection with the proposed educational qualification, a power that the judge may exercise harshly or arbitrarily. Those of this House who have among their constituencies many foreign born can, I am sure, readily conceive of cases where applicants for naturalization can speak the English to an extent sufficient to having his meaning comprehended by his English-speaking neighbors; yet in such a case, though the applicant be ever so learned in his own language, the judge could say to him:

You do not speak the English as well; you do not read it as readily nor understand it as fully and clearly as I judge the law requires you should.

In districts where foreigners are not looked on with favor; in parts of the country where the spirit of true and fair liberality toward the foreign born has not yet found an abiding place, I can readily conceive of just such decisions being made by judges however honestly inclined. There might be as many different views upon the questions I have mooted as there are jurisdictions and tribunals for naturalization.

Do you not see the difficulty that can arise upon the clause which has been called the educational qualification clause. By what standard do you say the judge shall be controlled? Shall the applicant be required to speak the English grammatically? Shall he speak and understand it, and read it too, as well and as nicely as the judicial officer in a particular jurisdiction may require, though his views as regards the test differ ever so widely from that of judges in other jurisdictions?

Mr. Chairman, for all the purposes of an educational qualification, if one is to be imposed, it seems to me that it should suffice if the applicant can write in his own language or in the English language. What we want, after all, in our citizens is character, quality, moral worth, and a loyal attachment to the principles of our American Government. [Applause.]

Some of our very good patriotic American citizens of foreign birth are men who can not speak the English tongue or who speak and read it so poorly that had they to apply for citizenship under such a clause as the Committee on Naturalization proposes they would risk rejection. Yet these men have intelligently read the newspapers, the books, the publications printed in a foreign language. I can call to mind very many good citizens in different cities and towns of this country who have gained their knowledge of current events from the reading of newspapers published in the German, in the French, or some other foreign language. They have read with intelligence, with interest, and with deep comprehension books and periodicals published in the German, the French, or some other foreign language; yet many of these men, for some reason or another, have not acquired the use of the English.

Mr. Chairman, I assert without fear of successful contradiction that in New York City—yes, in many of the cities of this Union—there are thousands and thousands of good citizens of German, Russian, Polish, Hungarian, Roumanian, French, Austrian, Italian, and other foreign birth who have intelligently read the newspapers, books, and publications printed in their mother tongue, and are fairly conversant with our system of government and of their duty generally as American citizens. They are loyal to the flag, they are devoted to this country, and love and respect our institutions. They are morally good; they are law-abiding; they have been good husbands, fathers, home makers. They have, in their own way, through toil and thrift and industry, contributed to the welfare of the country, and have raised children who have been and are some of the brightest pupils of our public schools and colleges.

Many of these men came to our country after their school days had passed—they became part of the hard-toiling classes of the land—and though versed in the language of their own country, have not had an opportunity to acquire the use of the English language so as to read it, speak it, understand it as this bill requires they should. Would you exclude such men as I have described from citizenship?

My time is running on and I can not discuss this matter more in detail. This bill fixes the fees for naturalization at entirely too high a figure. The bill fixes the total fees in each case at $11. While the committee is willing to reduce that by about half, as I understand, even that figure would be rather high. You can not improve quality of citizenship by an increase in the present fees for naturalization. Whether he pay a dollar or a dozen dollars does not improve or take from his quality. An increase in fees is but the imposition of a hardship. Many of our present naturalized citizens when they were naturalized could ill afford to pay the fees which this bill would fix as a price for naturalization. Yet, poor as these men were, they through honest labor improved their condition, made good homes, provided for families, voted honestly and intelligently at the polls, and became worthy of the honor and the name of an American citizen.

I regard it a high honor for any man coming to dwell amongst us to be admitted to citizenship, for the proudest title he can bear is that of a citizen of this great American liberty-loving Republic. [Applause.] But when the applicant for this honor, which he should prize as I do, comes here with a bona fide intention to remain and conform to our laws; when he, too, comes morally and otherwise qualified, no unnecessary hardships should be imposed on him.

Before concluding I desire to add that I agree with the distinguished gentleman from Indiana [Mr. CRUMPACKER] in what he said regarding those who came here to get citizenship and then went abroad again to take up their domicile in foreign lands. When a man acquires the honor of citizenship he ought to be loyal and honest enough to our country to spend his wealth, large or small, in the land wherein he had the opportunity to acquire it. He owes it to his adopted country, which holds out to him protection both at home and abroad, that here, on this soil, he shall bring up his family, teach his children the value of American liberty and the beauty and greatness of American life and its vast opportunities. He should be willing to spend here that which he acquired here, and if he fails in this by returning to take up a permanent domicile in a foreign land again, he is unworthy of American citizenship and ought to be deprived by law of its protection. [Applause.]

But those who come here to dwell permanently amongst us in peace; who seek us not only for the betterment of their condition, but also for the admiration they bear for America; who, having dwelt among us for the requisite probationary period, give evidence that they understand generally our system of constitutional government, and that they appreciate the benefits and greatness of our American institutions; who have manifested by their conduct here that they are attached to the principles of our Constitution; whose moral character and other qualities are such as make for good citizenship—when such as these knock at our doors for citizenship we may welcome them into the grand band of citizenship of this great and glorious Republic. [Applause.]

I reserve the balance of my time.

Mr. BONYNGE. Mr. Chairman, I yield ten minutes to the gentleman from California [Mr. HAYES] or so much time as he may desire.

Mr. HAYES. Mr. Chairman, I approach the discussion of this very important bill without any prejudice whatever against foreigners in general or against any particular class of aliens. I agree with the gentlemen who have spoken that in any legislation of this kind we should have due regard for the rights of the aliens who have chosen to cast their lots with us, but I also maintain that the principal consideration should be the welfare of the Republic. I think in the past our laws have generally been administered with too little regard for the welfare of the people of the United States, and often with too much consideration for the privileges and feelings of the aliens seeking naturalization.

The loose and incomplete laws on naturalization that have heretofore been on the statute books of the United States, and their lax and even criminal administration, make up a record that is a disgrace to our country.

Many reports have recently been made by commissions and agents of the different Executive Departments of the Government, showing a condition that ought to bring the blush of shame to every American. We have a report of an agent of the Department of Justice, showing the result of an investigation made by him in the city which the gentleman who has just spoken [Mr. GOLDFOGLE] has the honor in part to represent upon this floor, showing that 25,000 fraudulent naturalizations, in his estimation, are at present in force in the city of New York.

In 1905 Joel M. Marx, a special assistant United States attorney, in his report to the Department of Justice, shows that, as a result of his efforts in New York City for two years prior to his report, 1,916 fraudulently obtained certificates of naturalization were canceled, 791 indictments were found for crimes connected therewith, 685 convictions were had, and only 3 acquittals, while 103 cases were still pending.

In the city of Detroit, Mich., recently the most glaring frauds have been brought to light, and it has been shown that many

perjuries and crimes in connection with the naturalization of aliens have been committed in that city. In San Francisco, too, within the last few months the United States district atttorney has instituted investigations which demonstrated that fraudulent certificates by the hundred have been issued in that city, and he has prosecuted and sent to the penitentiary several men for offenses committed in connection with these fraudulent certificates.

These prosecutions and disclosures have brought home to us in California, as similar disclosures and prosecutions in all parts of the country have brought to the attention of the people everywhere, the necessity for amendments and additions to the naturalization laws that will, so far as possible, put a stop to these practices which are constantly bringing disgrace upon the country and trouble and labor to its officials. Even a superficial study of the subject will, I think, convince anyone that many of these frauds and crimes could have been prevented by adequate laws and regulations on the subject of naturalization.

From the report of Marcus Braun, an official detailed by the Department of Commerce and Labor for work in Europe, it appears that he discovered that thousands of fraudulent naturalization certificates were held by aliens residing in Europe and Asia, claiming to be naturalized American citizens. Many of these certificates have been purchased outright. Many more have been procured by false impersonations, and still others by aliens coming to this country and residing long enough to procure them and returning to their native land on the first boat that departs after they are clothed with the dignity of American citizenship. These certificates are considered in certain quarters of Europe and Asia as very valuable, as when armed with them the citizens of Turkey, for example, can conduct themselves in an unlawful manner, can even plot against the government of the country in which they live, and rely upon their American citizenship to protect them.

I am advised by the State Department that in a very large percentage of the cases where naturalized American citizens call upon our foreign representatives for protection, investigation discloses the fact that their citizenship papers are fraudulent and absolutely void, and that they are not entitled to the protection of the United States. Doubtless many others who are not entitled to it, but whose naturalization papers can not be demonstrated to be illegal, receive the protection of our flag.

Nearly all students of the subject have for many years agreed that two very essential considerations should be kept in view in any legislation on this subject, viz., uniformity and Federal supervision of all naturalization proceedings.

It would seem that no argument is necessary to convince gentlemen that uniformity in the methods of conferring American citizenship is very desirable, if not imperatively necessary. At present there is no uniformity, the methods of naturalizing citizens being as various as the several courts that conduct these proceedings. The importance of uniformity becomes more apparent when we consider that the adoption of the fourteenth amendment makes it impossible for any State to protect itself against undesirable persons who may be citizens of the United States. The gentleman from Ohio [Mr. GOEBEL], in his speech upon this subject, reported at page 6424 of the RECORD of the present session, enters into a very learned discussion to show that the matter of the qualifications for citizenship should be left to the several States, and in support of his contention quotes quite at length from the opinion of the court in the Slaughterhouse cases (16 Wal.). The gentleman seems to have misapprehended in some respects the scope of that decision. The court in that case expressly states that no State has any power since the passage of the fourteenth amendment to fix any qualifications which its citizens who are citizens of the United States must have. One of the learned counsel in that case correctly states the law thus:

> Citizenship in a State is made by residence, and without reference to the consent of the State.

Mr. Justice Miller, delivering the opinion of the court, in speaking of privileges of citizens of the United States conferred by the fourteenth amendment to the Constitution, says:

> A citizen of the United States can of his own volition become a citizen of any State in the Union by a bona fide residence therein, with the same rights as other citizens of that State.

It therefore follows that if a court of the State of Massachusetts chooses to admit to citizenship a criminal or an anarchist, the State of New York must admit such citizen when he takes up his residence in the latter State, to all the rights and privileges incident to citizenship in the State of New York, and since the adoption of the fourteenth amendment the State of New York has no way of preventing this result.

Before the adoption of the fourteenth amendment the argument of the gentleman from Ohio would have been very pertinent and, no doubt, sound, but at the present time his argument upon this point has no application.

The gentleman also argues that Federal citizenship confers no political rights. It is true that per se the naturalization of an alien does not confer the right of suffrage, though it does other political rights. Suffrage has been repeatedly held to be not a right, but a privilege, which a State could extend or deny to any class of its citizens, but, as a matter of fact, the result of naturalization to-day in three-fourths of the States is to confer all political rights, including suffrage, upon the naturalized alien as soon as he gains the necessary residence within the State where he takes up his abode. This will continue to be so until the constitution of thirty-three of the States of the Union are amended.

From these considerations, and there are many others that might be suggested did I have the time, I submit to the committee that uniformity in the requirements for naturalization and in the methods employed in admitting aliens to citizenship becomes of the highest importance.

That Federal supervision and control of naturalization are absolutely necessary to prevent the frauds and crimes that for fifty years have been perpetrated in admitting aliens to citizenship, all students of the subject admit. In his annual message of 1884 President Arthur states:

> It might be wise to provide for a central bureau of registry, wherein should be filed authenticated transcripts of every record of naturalization in the several Federal and State courts, and to make provision also for the vacation and cancellation of such record in cases where fraud had been practiced upon the court by the applicant himself or where he had renounced or forfeited his acquired citizenship.

In 1885 President Cleveland, in his first annual message, used these words:

> I regard with favor the suggestion, put forth by one of my predecessors, that provision be made for a central bureau of record of the decrees of naturalization granted by the various courts throughout the United States now invested with that power.

In 1904, in his annual message, President Roosevelt backed up these recommendations in the following language:

> The courts should be required to make returns to the Secretary of State at stated periods of all naturalizations conferred.

A thorough Federal supervision was also recommended by C. V. C. Van Deusen, special examiner of the Department of Justice, in his report to that Department on June 14, 1905. Later in 1905 the Commission on Naturalization appointed by the President at the close of the last Congress made the same recommendation. The Committee on Immigration and Naturalization, recognizing the wisdom and necessity for this supervision and having that in view as one of the purposes to be attained by the present bill, have nevertheless carefully eliminated all provisions that, in their judgment, were not necessary to adequately secure such supervision.

My colleague the gentleman from California [Mr. SMITH), in his remarks a few moments ago, declared that—

> The procedure required by this bill is entirely too complicated, and that men who would make entirely satisfactory citizens will be deprived of citizenship, with no corresponding good in any other direction.

I beg to take issue with my colleague upon this subject, and venture to suggest that if he will consider this bill in connection with the necessity for uniformity and Federal supervision, I am satisfied that he will conclude with me that only such provisions are incorporated therein as are necessary to secure such desired uniformity and Federal supervision.

My colleague objects to the technical character of the papers required by the bill. I believe he will admit that this objection falls to the ground when he understands that the Government is to furnish all the blanks for these proceedings, and all that remains is for the applicant or the clerk of the court, or any person, to fill in the names, dates, etc. No legal knowledge is necessary to perform this small act. I fail to see where any hardship is imposed on the alien desiring naturalization other than those imposed upon him by the present law, except in the matter of fees, which it is proposed by this bill to somewhat increase, and in the matter of waiting ninety days after the filing of his petition before his final certificate can be issued. But this delay is necessary in order that the Government can examine the case to see whether there is any legal cause to deny his petition. Although in some cases this may work a little hardship, since the very purpose of the law would be defeated unless time were allowed the Bureau to investigate, it seemed to the committee that a few incidental inconveniences or hardships should have no weight as against the imperative necessity of providing for careful investigation, and, if necessary, resistance of the application for naturalization of aliens.

If the fees provided for in this bill are deemed by some gentlemen too high, I believe all will agree that they should be high enough to prevent the wholesale political naturalizations that for many years have been so common just prior to an election.

Mr. Chairman, I shall reserve the discussion of the various provisions of the bill in detail until those provisions are reached under the five-minute rule.

Mr. GOLDFOGLE. Mr. Chairman, I ask unanimous consent to extend my remarks in the RECORD.

The CHAIRMAN. The gentleman from New York [Mr. GOLDFOGLE] asks unanimous consent to extend his remarks in the RECORD. Is there objection?

There was no objection.

Mr. BONYNGE. Mr. Chairman, I yield a minute to the gentleman from New York [Mr. BENNET].

Mr. BENNET of New York. Mr. Chairman, I rise to say something that I assume my colleague on the committee from California [Mr. HAYES] would have said had he had the time, and that is this: That fraudulent naturalizations in the city of New York are not entirely, or not in the majority of instances even, the result of any bad action on the part of the court. But they were made possible by the loose system. They were counterfeits; they were duplicated; they were every kind of a bad certificate that could be gotten up under a loose system; but in the investigation they found that the Federal court there was under suspicion of collusion in only two cases out of the thousands. But the bad certificates are there, and they ought to be wiped out.

Mr. BONYNGE. Mr. Chairman, how much time have I remaining?

The CHAIRMAN. The gentleman has four minutes remaining.

Mr. BONYNGE. How much time has the gentleman on the other side?

The CHAIRMAN. The gentleman from New York [Mr. GOLDFOGLE] has three minutes remaining.

Mr. BONYNGE. Mr. Chairman, I yield such time to the gentleman from California [Mr. HAYES] as he may desire of the time remaining to this side.

Mr. HAYES. Mr. Chairman, I just rise to state, in reply to the suggestion of the gentleman from New York, that he is quite correct that the great bulk of these fraudulent certificates have never seen the court at all, but there are no means provided for determining which are illegal and which are not, and this bill provides such a method.

Mr. GOLDFOGLE. Mr. Chairman, I yield the balance of my time to my colleague from New York [Mr. GOULDEN].

Mr. GOULDEN. Mr. Chairman, replying to the gentleman from California [Mr. HAYES] in regard to the large number of fraudulent naturalization papers, I want to say that the evidence before the United States district attorney and the investigations of the United States Federal grand jury in New York covering months will show there was a large number of fraudulent naturalization papers, but that these officials united in saying that it was not confined to the city or State of New York, but extended all over the United States.

Mr. HAYES. Mr. Chairman, if the gentleman will permit me, I will say that recently two men have been sent to the penitentiary—less than two months ago, in the city of San Francisco—for naturalization frauds, and the United States district attorney gave published notice that all holders of fraudulent naturalization certificates who should within the next sixty days deliver them up to be canceled would not be prosecuted. In the first thirty days 204 fraudulent certificates were delivered and canceled.

Mr. GOULDEN. I want to say that I simply desire to correct any impression that might prevail here and in the country at large that in New York perhaps more are guilty of these violations than any other section of the United States. New York, the great metropolis of the nation, is in fact less guilty in proportion to our number than other cities of the country.

Mr. WACHTER. Mr. Chairman, I want to corroborate what the gentleman said, because my friends in my own district sent seven men to the Maryland penitentiary for illegal naturalization.

Mr. GOULDEN. And I think the gentleman will bear me out that only a few were caught in his city, though Baltimore is as good and patriotic as any other section of the country. [Laughter.]

Mr. WACHTER. We are always second to New York in all good things.

Mr. NORRIS. Mr. Chairman, I would like to know if there are any other gentlemen that have confessions to make?

Mr. GOULDEN. I have no doubt that the gentleman [Mr. NORRIS] who has just taken his seat could make an equally strong confession and plausible excuse if he were given the time in which to do so and felt so inclined. [Laughter.]

Mr. BONYNGE. Mr. Chairman, I ask for the reading of the bill, if the time has been consumed.

The CHAIRMAN. The Clerk will proceed.

The Clerk read as follows:

SEC. 2. That the Secretary of Commerce and Labor shall provide the said Bureau with such additional furnished offices within the city of Washington, such books of record and facilities, and such additional assistants, clerks, stenographers, typewriters, and other employees as may be necessary for the proper discharge of the duties imposed by this act upon such Bureau, fixing the compensation of such additional employees within the appropriations made from time to time for that purpose.

Mr. SULLIVAN of Massachusetts. Mr. Chairman, I offer the following amendment.

The CHAIRMAN. The gentleman from Massachusetts [Mr. SULLIVAN] offers an amendment, which the Clerk will report.

The Clerk read as follows:

Page 2, line 14, after the word "employees," insert "drawn from the civil-service list."

Mr. SULLIVAN of Massachusetts. Mr. Chairman, I would like to inquire of the gentleman in charge of the bill if he would have any objection to having this large force which is to be employed in the new Bureau drawn from the civil-service list?

Mr. BENNET of New York. Mr. Chairman, the law governing employees under the Commissioner of Immigration now provides that all the employees of his office must be taken from the civil-service list.

Mr. SULLIVAN of Massachusetts. Now, I will ask the gentleman if it follows from that as a necessary consequence that the employees provided for in this act will be taken from the civil-service list?

Mr. BENNET of New York. Unquestionably, because this is the same Bureau with simply a change in the name.

Mr. SULLIVAN of Massachusetts. Then, Mr. Chairman, I withdraw the amendment upon the gentleman's statement.

I offer another amendment to the same section.

The CHAIRMAN. The gentleman from Massachusetts [Mr. SULLIVAN] offers a further amendment, which the Clerk will report.

The Clerk read as follows:

Strike out all after the word "Bureau," in line 16, and substitute therefor the words "at such compensation as shall be provided by law."

Mr. SULLIVAN of Massachusetts. Mr. Chairman, we are creating a new bureau here for the enforcement of the law that we seek to pass, and it is necessary that Congress should pass upon the question of salaries to be paid to the large force of employees. I think it is contrary to sound policy to allow the head of this Department to fix the salaries and allow Congress to have no supervision of them. Now, at the very inception of this scheme it seems to me to be proper to have Congress pass upon the salaries that are to be paid to these employees. Therefore this amendment is offered, which provides that the compensation of the employees shall be fixed in a manner provided by law.

Mr. BONYNGE. If the gentleman will yield for a moment, that might do very well, I will say to the gentleman from Massachusetts [Mr. SULLIVAN], after the force is organized, but between this time and the next appropriation bill there will be no law fixing the salaries of these special employees, and therefore some such general provision as this seemed necessary to the committee for the first year. In the next year, when we have an appropriation bill, their salaries will be fixed in that appropriation bill.

Mr. SULLIVAN of Massachusetts. Now, let me ask when the law will begin to operate, if it passes at this session?

Mr. BONYNGE. In ninety days after the passage of the bill. The law would go into effect ninety days after the date of its passage according to section 32, but section 2 goes into effect immediately, in order that the Bureau may organize and may get its force of clerks.

Mr. SULLIVAN of Massachusetts. The question I want to ask the gentleman is this: Whether it would not be possible to have the Secretary of Commerce and Labor make an estimate now of the number of employees required and the salaries to be paid to them and submit that to Congress in time to have the matter provided for in the general deficiency bill before this Congress adjourns?

Mr. BONYNGE. I do not think that would be practical, Mr. Chairman. I do not think it is hardly necessary. This is a provision which will only be in existence for not more than six months.

Mr. SULLIVAN of Massachusetts. The trouble with it is, as I am informed, that the salaries paid now in that Department average higher than the salaries paid in any other Department of the Government, and that they were made higher, in the first place, in order that transfers would be made of employees from other and more poorly paid Departments to the Department of Commerce and Labor.

Mr. MANN. Is the gentleman's information certain in regard to that Department?

Mr. SULLIVAN of Massachusetts. It has been stated by the Department in the hearings before the committee.

Mr. MANN. The Department was not consulted when the bill was passed, and certainly that was not the intention in fixing the salaries in that bill.

Mr. SULLIVAN of Massachusetts. I will state it is my recollection that the Secretary of the Department himself at the time the Bureau was created came before the committee and stated that he purposely wanted the salaries made high so that clerks would get transfers from other Departments to his, and that he would have the best class of employees of all the Departments in Washington; and he is on record as saying it.

Mr. MANN. The gentleman is referring to the action of the Committee on Appropriations?

Mr. SULLIVAN of Massachusetts. I am.

Mr. MANN. Not to the action of the committee creating the Department that the gentleman referred to?

Mr. SULLIVAN of Massachusetts. I am speaking of the committee and the salaries submitted to it by the Department.

Mr. MANN. The Committee on Appropriations, not the committee that reported and passed the bill?

Mr. SULLIVAN of Massachusetts. I stand corrected in that particular. It was a statement to the Committee on Appropriations by the Secretary. Now, then, it seems to me that the Secretary of the Department, if he has the power, will fix these salaries on the same high plane, and I think it will be better to give the power to decide the number of employees and fix the salaries to the House. There is sufficient time to enable the Secretary to make an estimate of the number of employees that he will require and the proper salaries to be paid to them and furnish it to this Congress in time for it to act.

Mr. MANN. Is there an amendment to this section which gives the Secretary the power to fix the salaries?

Mr. SULLIVAN of Massachusetts. The section itself gives the Secretary power. It reads:

> Fixing the compensation of such additional employees within the appropriations made from time to time for that purpose.

That is in section 2.

The CHAIRMAN. The time of the gentleman has expired.

The question is on the amendment offered by the gentleman from Massachusetts.

Mr. TAWNEY. I would like to have the amendment read.

The amendment was again read.

Mr. TAWNEY. Mr. Chairman, I would like to ask the gentleman from Massachusetts, in the event of the adoption of this amendment, if the salaries of the clerks employed under this bill will be provided for just as the salaries of all the other clerks in the Department of Commerce and Labor are provided for, namely, by the Secretary submitting estimates to Congress and Congress fixing the salaries?

Mr. SULLIVAN of Massachusetts. Yes. That is what I hope will be effected by the amendment. That is what I am trying to secure. It is my opinion that there is ample time for the Secretary to ascertain the number of employees necessary for the purpose of enforcing the law. He can make an estimate and send it to the Committee on Appropriations and have it carried in the general deficiency bill, and that seems to me the proper line of action and much safer than to allow the heads of Departments to fix the salaries.

Mr. BONYNGE. I would have no objection to that amendment if it were possible to carry it into effect, so that the section could be operative as provided for by the bill. It must be remembered that after we pass this bill, if we do, in the House, it must go to the Senate, and it may there be passed, if it be passed during this session of Congress, just before we adjourn, possibly, when it will be beyond the power of the Secretary of Commerce and Labor to make any estimate and provide for any clerks or assistants in his Bureau until the next session of Congress, when we have an appropriation bill.

Mr. MANN. How would his clerks get paid, if an appropriation is not made by Congress?

Mr. BONYNGE. We have an appropriation in the bill itself.

Mr. TAWNEY. I do not think the gentleman's objection to the amendment is valid. If the bill passes, certainly the general deficiency bill will be the last thing that Congress will enact into law during the session, and the Secretary of Commerce and Labor, if the bill passes the House, on the theory of becoming law, can make an estimate of the number of clerks, and submit that estimate to Congress, which can put the items on the bill, and when the bill becomes a law the force will be provided for. That is done every session of Congress.

Mr. BONYNGE. Let me say to the gentleman that the Secretary will not make any estimate until the bill has been finally passed.

Mr. TAWNEY. He may make an estimate informally, as they do every day.

Mr. BONYNGE. He would hardly make it until after the bill is passed, so that he may know what the provisions of the bill are and what clerical force will be required. If this bill does finally pass, how would there be time for the Secretary to make an estimate as to the amount of money that would be required for the clerical assistance and have it put in an appropriation bill?

Mr. TAWNEY. If the bill were to become a law the last week of the session, I do not think it would require over twenty-four hours' time for the Secretary to make that estimate.

Mr. BONYNGE. I submit that if the gentleman will read the provisions of the bill and examine it closely he will change his opinion about that.

Mr. GARDNER of Massachusetts. Will the gentleman yield?

Mr. BONYNGE. I will yield to the gentleman.

Mr. GARDNER of Massachusetts. Mr. Chairman, this is only a question of how the additional clerical force shall be paid in the current year. As a matter of fact, the Secretary of Commerce and Labor already fixes the compensation for all the immigration officials, the officials in the Bureau of Immigration and Naturalization, except these additional clerks. He is just as familiar as is the Committee on Appropriations with the necessity required for the payment of these additional clerks in the coming year. He is doing it all the time, because under existing law all employees of the Immigration Bureau outside of the city of Washington do have their salaries fixed by the Secretary of Commerce and Labor and not by the Committee on Appropriations.

For one year, I think, at least, it is safe to intrust to the Secretary of Commerce and Labor, who is doing it every day, the duty of saying what these salaries shall be.

Mr. MANN. If the gentleman from Massachusetts were correct in stating that this provision only applies to one year I can see a good reason for it, but I think that is not the case. This provision which the gentlemen have put in the bill will give the Secretary of Commerce and Labor, so long as it remains the law, the power to fix the salaries in this particular Bureau, to fix them at whatever he may please, and give him a lever which he will use, as we all know, to increase salaries, not only in the Bureau of Immigration, but throughout the Department of Commerce and Labor, a power which will extend, because every Member of Congress will be constantly told that such and such an official in the Bureau of Immigration receives such a salary and "I have work of equal value and I want my salary increased."

Mr. GARDNER of Massachusetts. The gentleman is painting a wonderful picture.

Mr. MANN. The gentleman is painting a true picture.

Mr. GARDNER of Massachusetts. The gentleman is painting a picture as it exists to-day.

Mr. MANN. I beg the gentleman's pardon; it does not exist to-day in the District of Columbia, in the city of Washington.

Mr. GARDNER of Massachusetts. No; but in every other office of the immigration service in the United States.

Mr. MANN. The gentleman from Massachusetts is correct when he says we make a lump-sum appropriation for the control of this service outside of the city of Washington, outside of the departmental service, and it is a very serious question whether it is not a gross extravagance on the part of the Government. We all know the lump-sum appropriations constantly lead to great extravagance, and whether that be so or not, this gives power to the House in this particular section of the bill to increase salaries, in making appropriations, for one particular bureau of the Government, when no other bureau of the Government has that opportunity. I do not think the gentleman himself has any desire to do that. He wishes to confine the scope of this provision to one year, but this does not confine it to a year. This makes it in order at any time in the House to move to increase the amount of money appropriated for the Bureau and then let the Secretary fix the additional salary. It makes no limitation of salaries in this Bureau.

Mr. TAWNEY. If the gentleman will permit me, if this amendment is not adopted and the Secretary of Commerce and

Labor is authorized to fix the salaries in this particular bureau at such a figure as he may see fit, it will never be possible for Congress to provide for these salaries specifically unless there is legislation hereafter giving Congress that power. In other words, if the appropriation bill should carry specific authorization for these particular salaries, it would go out on a point of order.

Mr. MANN. It would be subject to a point of order because not authorized by law.

Mr. TAWNEY. Therefore it means that if authority is given to the Secretary of Commerce and Labor to fix these salaries now, that that authority will exist forever.

The CHAIRMAN. The time of the gentleman has expired.

Mr. GARDNER of Massachusetts. Mr. Chairman, I move to strike out the last word.

Mr. MANN. Mr. Chairman, I ask unanimous consent to proceed for five minutes.

The CHAIRMAN. The gentleman from Illinois asks unanimous consent to proceed for five minutes. Is there objection?

There was no objection.

Mr. GARDNER of Massachusetts. Mr. Chairman, I have just moved to strike out the last word.

Mr. MANN. Oh, Mr. Chairman, if the gentleman wishes to object, I am perfectly willing.

Mr. GARDNER of Massachusetts. I will not object to the gentleman's request.

Mr. MANN. It is quite immaterial to the gentleman whether he objects or not. The gentleman is perfectly able to take care of himself on the floor.

Mr. GARDNER of Massachusetts. Mr. Chairman, a parliamentary inquiry. I ask now whether the gentleman's time and all other time has not expired on this amendment?

The CHAIRMAN. Debate on the amendment has expired, but the gentleman from Illinois [Mr. MANN] is recognized to speak for five minutes by unanimous consent.

Mr. MANN. Now, Mr. Chairman, I will be willing to yield to the gentleman a part of the time if he requires it. The result of the original proposition would be that, under the rules of the House, it will not be competent for the House to appropriate for the specific salaries, but they must appropriate a lump sum of money out of which the Secreatry shall fix the salaries. That, I say, is a wrong policy. It was not the intention, in my judgment, of the Committee on Immigration to adopt that policy, but that is the result of the language in the bill. It is a policy that Congress is endeavoring to get away from instead of endeavoring to go toward, doing away, as far as possible, with the policy of lump-sum appropriations for salaries, and it would be, in my judgment, a serious mistake to leave such a provision in the bill.

Mr. GARDNER of Massachusetts. Mr. Chairman, the gentleman is perhaps correct in thinking that Congress is trying to get away from that system. Such part of Congress, however, as is comprised in the Committee on Immigration and Naturalization is not. We have deliberately in the immigration bill retained the provision by which the Secretary of Commerce and Labor can fix the salaries out of the fund appropriated. Now, so far as this particular section is concerned, I personally should not object to it if it were so limited that after one year the Appropriation Committee, which is so anxious to have this additional duty, should have the privilege of fixing those salaries; but unless the amendment of the gentleman from Massachusetts [Mr. SULLIVAN] is so amended as to leave the present section operative for a year I hope that the committee will vote it down.

Mr. BENNET of New York. Mr. Chairman, I would like to ask the gentleman from Massachusetts [Mr. SULLIVAN] if he will not be willing to modify his amendment so as to make it apply to the fiscal year commencing July 1, 1907?

Mr. BONYNGE. That would be satisfactory to the committee.

Mr. SULLIVAN of Massachusetts. Well, I do not quite understand the meaning of the gentleman from New York.

Mr. BENNET of New York. Mr. Chairman, I move to strike out the last word. If this bill becomes a law at all at this session of Congress it will become a law very late in the session. The gentleman from Minnesota [Mr. TAWNEY] says that estimates can be sent in, and I presume that is true; but of what earthly good would estimates be which are sent in in the last twenty-four hours of a session or the last three days of a session? They would amount to nothing. Here is a new bureau, a new work created for the first time in the history of the country, with no precedents by which to guide it, nothing to indicate how much money will be necessary, and here is a bill that will bring into the Treasury probably $250,000 a year. It costs the country nothing, and this provision gives the Secretary the first year the right to organize his Bureau the way it ought to be organized, and after that first year the committee reporting this bill has no objection to the whole subject going under the jurisdiction of the Committee on Appropriations.

Mr. FITZGERALD. Mr. Chairman, will the gentleman yield?

Mr. BENNET of New York. Yes.

Mr. FITZGERALD. Under this language which authorizes the employment of all necessary assistants of every character, has not the Secretary the right to pay them out of the money appropriated in the bill without specifically using this other language which would make it impossible for Congress in the ordinary conduct of business to change those salaries?

Mr. BENNET of New York. Congress, of course, could regulate it by the amount of the lump sum that it appropriated.

Mr. FITZGERALD. But under the authority to employ such additional assistants, clerks, stenographers, typewriters, etc., the Secretary would have the power to fix the compensation without that clause which has given rise to the discussion at this time.

Mr. BENNET of New York. The gentleman means under existing law?

Mr. FITZGERALD. Under the law right in there. If he is given authority to employ help, he has the implied authority to pay them out of the fund appropriated.

Mr. BENNET of New York. That is given to him specifically in line 16, fixing the compensation.

Mr. FITZGERALD. That is the particular language to which objection is made, and he would have just as much authority without that.

Mr. BENNET of New York. The gentleman may be correct about that.

Mr. BONYNGE. Mr. Chairman, I understand the gentleman from Illinois [Mr. MANN] has framed an amendment which I think will cover the objection made.

Mr. SULLIVAN of Massachusetts. I wanted to find out the meaning of the gentleman from New York [Mr. BENNET]. Is it his desire that the Secretary shall determine the number and fix the amount of salaries until July 1, 1907?

Mr. BENNET of New York. Yes.

Mr. SULLIVAN of Massachusetts. And that after that Congress shall fix the salaries?

Mr. BENNET of New York. Yes.

Mr. BONYNGE. That is the amendment I understand the gentleman from Illinois will offer.

Mr. SULLIVAN of Massachusetts. I have no objection personally to that. I would be glad to accept that amendment.

Mr. MANN. Mr. Chairman, I offer the following amendment as a substitute, which I send to the desk and ask to have read.

The Clerk read as follows:

Page 2, line 17, after the word "employees," insert the words "until July 1, 1907;" and after the word "made" strike out "from time to time;" so as to read, "fixing the compensation of such additional employees until July 1, 1907, within the appropriations made for that purpose."

Mr. SULLIVAN of Massachusetts. Now, Mr. Chairman, I think that is the best suggestion that has been made, and I desire to ask unanimous consent to withdraw my amendment so the vote may be taken upon the substitute amendment.

Mr. BONYNGE. And the committee is ready to accept it.

The CHAIRMAN. The gentleman from Massachusetts asks unanimous consent to withdraw his amendment. Is there objection? [After a pause.] The Chair hears none.

The question was taken; and the substitute amendment was agreed to.

The Clerk read as follows:

SEC. 3. That exclusive jurisdiction to naturalize aliens as citizens of the United States is hereby conferred upon the following specified courts:

United States circuit and district courts now existing, or which may hereafter be established by Congress in any State, United States district courts for the Territories of Arizona, New Mexico, Oklahoma, Hawaii, the district of Alaska, the supreme court of the District of Columbia, and the United States courts for the Indian Territory; also all courts of record in any State now existing, or which may hereafter be created, having a seal, a clerk, and jurisdiction in actions at law in which the amount in controversy is unlimited.

That all judges, justices, clerks, and officers of such State courts, when acting in naturalization matters, shall be deemed to be officers and agents of the United States. That the naturalization jurisdiction of all courts herein specified, both State and Federal, shall extend only to aliens resident within the respective judicial districts of such courts.

The courts herein specified shall, upon the requisition of the clerks of such courts, be furnished from time to time by the Bureau of Immigration and Naturalization with such blank forms as may be required in the naturalization of aliens, and all certificates of naturalization shall be consecutively numbered and printed on safety paper furnished by said Bureau.

Mr. BONYNGE. Mr. Chairman, I offer an amendment. In line 2, page 3, after the word "State," insert the words "or Territory."

The CHAIRMAN. The Clerk will report the amendment.

The Clerk read as follows:

Page 3, line 2, after the word "State," insert the words "or Territory."

The question was taken; and the amendment was agreed to.

Mr. SULLIVAN of Massachusetts and Mr. HEPBURN rose.

Mr. SULLIVAN of Massachusetts. Mr. Chairman, I offer an amendment.

The CHAIRMAN. For what purpose does the gentleman from Iowa rise?

Mr. HEPBURN. I desire to make an inquiry of the gentleman in charge of the bill.

The CHAIRMAN. The Chair has just recognized the gentleman from Massachusetts to offer an amendment.

Mr. SULLIVAN of Massachusetts. I am willing to yield to the gentleman.

Mr. HEPBURN. Later on.

The CHAIRMAN. The Clerk will report the amendment offered by the gentleman from Massachusetts.

The Clerk read as follows:

Page 3, section 3, add after the word "unlimited," in line 5, "and all State courts of record having a seal and a clerk and which are next in rank below the nisi prius courts of such State."

Mr. SULLIVAN of Massachusetts. Mr. Chairman, I am not familiar with the constitution of the courts in all the States and Territories, but my amendment seeks to retain jurisdiction in a class of courts in the State of Massachusetts which now exercise jurisdiction over the subject of naturalization and which exercise it well; in fact, to the satisfaction of everybody. In our State the municipal courts of the city of Boston and the district and police courts throughout the Commonwealth now naturalize aliens, and for the last few years they have done the bulk of that work. It has been found extremely inconvenient in practice to have men come from the western part of the State, perhaps a hundred and fifty miles, to a district court of the United States sitting in the city of Boston for the purpose of being naturalized. Therefore the district and police courts throughout the State have exercised that jurisdiction to the great convenience of those desiring to be naturalized and to the entire satisfaction of everybody concerned.

Mr. TAWNEY. Will the gentleman permit a question?

Mr. SULLIVAN of Massachusetts. Certainly.

Mr. TAWNEY. Are these courts which you have just now mentioned courts of record?

Mr. SULLIVAN of Massachusetts. They are all courts of record.

Mr. TAWNEY. Then they would be included in the language——

Mr. SULLIVAN of Massachusetts. No; because of the last few words; they are not courts of unlimited jurisdiction, and for that reason they would be excluded under the provisions of this bill. Now, I apprehend that there would be some difficulty in enforcing the law as I seek to amend it, and yet I believe that the hardships which will follow in enforcing the law will be greater than those which would follow if the law is amended. I know that there are courts in other States in the Union of the same class of which I speak which are perhaps not so competent to discharge the duties of naturalization courts as the courts in the State of Massachusetts, but I believe we ought not to take jurisdiction out of a class of courts that now exercise that jurisdiction properly to the satisfaction of all the citizens of the State and all of the political parties of the State and to the great convenience of the men who seek naturalization.

Mr. CRUMPACKER. Will the gentleman allow me? Under the amendment offered by the gentleman from Massachusetts the justice of the peace courts of Indiana would be included. Our supreme court has decided that they are courts of record, and the last legislature required them to keep a seal, so they are courts of record.

Mr. SULLIVAN of Massachusetts. Are they courts next in grade below the nisi prius courts?

Mr. CRUMPACKER. They are.

Mr. SULLIVAN of Massachusetts. Now, I want to be entirely fair in the matter. I will state that such courts under this amendment would exercise jurisdiction. Now, I will ask for information: Is it your opinion that these justice of the peace courts in the State of Indiana are not competent to naturalize aliens?

Mr. CRUMPACKER. Decidedly. I do not think they ought to have any voice in the question of citizenship at all.

Mr. SULLIVAN of Massachusetts. That is the difficulty, and I expected that.

Mr. CRUMPACKER. They are elected without any regard to their question of competency or qualification, as a rule.

The CHAIRMAN. The time of the gentleman from Massachusetts [Mr. SULLIVAN] has expired.

Mr. SULLIVAN of Massachusetts. Mr. Chairman, I ask unanimous consent for five minutes more.

The CHAIRMAN. The gentleman from Massachusetts asks unanimous consent to continue his remarks for five minutes. Is there objection?

There was no objection.

Mr. STAFFORD. Would the gentleman from Indiana have any objection to vesting jurisdiction in these matters in courts above the grade of justices' courts, and not having unlimited jurisdiction?

Mr. CRUMPACKER. Yes; I do not believe jurisdiction to confer citizenship upon aliens ought to be vested in any court except those of general original jurisdiction.

Mr. SULLIVAN of Massachusetts. Now, Mr. Chairman, the courts in the State of Massachusetts that I have spoken of will be excluded under the terms of this bill unless this amendment be adopted, and I fancy that there are many other States in which courts of the same class now exercising jurisdiction will be excluded also under the terms of this act. Under this act the only courts competent to naturalize aliens will be the supreme court of the State, the superior courts, which is our nisi prius court, and the courts of the United States. Now, the people from the western part of the State can not come to Boston conveniently, and I state positively that neither our supreme court, which is our highest court, nor the superior court, which is our nisi prius court, will ever take the time to naturalize aliens. The district, police, and municipal courts will be excluded by the provisions of the act, and the result will be that we will not have a sufficient number of courts under this act to properly transact the business of naturalization in the State of Massachusetts.

Mr. GARDNER of Massachusetts. Is it not true that the superior court sits in each county in the State of Massachusetts from time to time?

Mr. SULLIVAN of Massachusetts. Yes.

Mr. GARDNER of Massachusetts. And taking the counties outside of Suffolk, is it not true they would have plenty of time—in my county, for instance, which is Essex—to attend to naturalizations?

Mr. SULLIVAN of Massachusetts. I think not. I am quite sure they would not, Mr. Chairman. That is my judgment, at least.

Mr. GARDNER of Massachusetts. The gentleman is a lawyer and I am not. His judgment would be better than mine on that question.

Mr. SULLIVAN of Massachusetts. I know that there are questions now over which the superior court has jurisdiction which it never exercises. The probate courts in our State have the entire business of committing lunatics, and no attorney can get the justices of the superior court to exercise that function, and I apprehend that the same result will follow in the matter of naturalizations.

Now, while it may work some hardship somewhere else, I solemnly protest in the name of my State against stripping this class of courts of that jurisdiction which it has so well exercised in the past.

Mr. GARRETT. Relative to the suggestion of the gentleman from Indiana [Mr. CRUMPACKER], if the amendment of the gentleman from Massachusetts [Mr. SULLIVAN] is adopted it would confer jurisdiction upon justices of the peace of his State, has the gentleman from Indiana observed that the provisions state that the amount in controversy must be limited? And would that save the case in your State of Indiana?

Mr. CRUMPACKER. Does the gentleman's amendment provide that the amount in controversy shall not be unlimited?

Mr. SULLIVAN of Massachusetts. No.

Mr. CRUMPACKER. Under his amendment I do not see that Indiana would have the authority——

Mr. SULLIVAN of Massachusetts. Let me ask the gentleman from Indiana, suppose the limitation of $2,000 was put upon these courts, would that exclude the justices' courts of Indiana?

The CHAIRMAN. The time of the gentleman from Massachusetts [Mr. SULLIVAN] has expired.

Mr. SULLIVAN of Massachusetts. Mr. Chairman, I ask one minute more for the purpose of asking a question of the gentleman who has charge of the bill. Following out the suggestion of the gentleman from Tennessee [Mr. GARRETT], suppose we put a limitation to the amount of $2,000 upon the class of courts that are included in my amendment, would the gentleman then oppose my amendment?

Mr. BONYNGE. I would oppose the amendment, and I desire to be heard in opposition to the amendment.

Mr. POWERS. Mr. Chairman, I desire to occupy the time of the committee but a few minutes.

Mr. BONYNGE. I desire to be heard in opposition. Under

the five-minute rule I think one side is entitled to be heard in favor of the amendment for five minutes and the other side against the amendment for five minutes.

Mr. POWERS. Mr. Chairman, I rise to say something in opposition to the amendment, but I will give way to the gentleman if he wishes.

Mr. BONYNGE. Very well. I can be heard later.

Mr. POWERS. I am very desirous that naturalization should be conducted in courts that will give proper consideration. In my own State naturalization can only be obtained in the United States court, in the supreme court, and in the superior court. This bill allows naturalization in those courts. I do not believe it should be extended any further. I think that perhaps one reason why there have been spurious or false naturalization papers which gentlemen complain of is the fact that courts under these have been allowed to exercise that right.

Mr. MANN. Will the distinguished gentleman from Maine yield for a question?

Mr. POWERS. Certainly, sir.

Mr. MANN. He is undoubtedly in favor of giving a reasonable opportunity to a man to be naturalized if he wishes? The provision in this bill would prevent twenty-eight different courts in the city of Chicago from issuing naturalization papers, any one of which probably entertains a great deal more legislation than the ordinary court does.

Mr. BONYNGE. Will the gentleman just yield for a moment? In answer to the gentleman from Illinois [Mr. MANN], I desire to call the committee's attention to the fact that possibly for the same reason, namely, that there are twenty-eight courts in Chicago naturalizing aliens, it became necessary for this House only a few days ago—upon a bill introduced by the gentleman from Illinois, known as the "bill H. R. 18713"—to validate some thousands upon thousands of certificates of naturalization that had been improperly issued in the courts of the city of Chicago.

Mr. MANN. It showed how necessary it was to let the court have jurisdiction.

Mr. POWERS. Mr. Chairman, I decline to yield further.

Mr. MANN. Twenty-eight thousand; and you have proved it.

Mr. POWERS. Mr. Chairman, it seems to me that all of this large number of spurious naturalization papers enumerated by the gentleman are to be found—or nearly all of them—in our great cities, and it is there that the remedies must be applied. I have no doubt this may result very largely from the fact that it is in those cities where so many courts and so many different courts of unlike jurisdiction exercise the right of naturalization. Now, I live in a border State. I live in a district where there are a good many naturalizations. I live in a district and State where, as I stated to you, no courts but those that I have mentioned, namely, the United States court and the supreme and superior courts of the State, exercise the power and the right of naturalization, and I never yet have heard an intimation of a spurious naturalization paper ever having been granted either in my district or my State. Certainly there has never been any criminal prosecution or indictment of any person on any such charge.

There are a great many safeguards in this bill in reference to the declaration and all the preliminary proceedings, some of which, I think, are unnecessary and uncalled for. But I do believe that if we are to have naturalization that shall be correctly, legally, and wisely administered, which shall not be spurious, vicious, or granted without due and proper care and consideration, that we must have this naturalization confined and granted in courts of such jurisdiction and such standing that there can be no question about them and the judicial care that will be taken in every case. Therefore I am opposed to the amendment of the gentleman from Massachusetts [Mr. SULLIVAN]. As I have not the faith in the high standing and judicial learning of municipal and police courts as would lead me to deem it wise and safe to grant to them this power—though I do not desire to be understood as in any way reflecting upon these courts—they perform important functions, yet naturalization, in my judgment, is not a proper subject for their consideration.

Mr. GARRETT. The bill seems to limit the jurisdiction to those courts that have jurisdiction in cases at law.

Mr. POWERS. Yes.

Mr. GARRETT. Now, I think a few States, among which is my own, have separate chancery courts, so-called equity courts, that are of as high rank as courts of law. I do not know that this question is of so great importance in my State as it may be in some others where there are many immigrants.

Mr. POWERS. Will the gentleman allow me to ask him a question right here?

Mr. GARRETT. Certainly.

Mr. POWERS. Do not the same judges sit one hour as judges of a court of equity and the next hour as judges of a court of law, or are they separate and distinct judges? I mean law and equity judges.

Mr. GARRETT. They are separate and distinct, and have separate and distinct records.

Mr. POWERS. Then the law and equity judges are different persons?

Mr. GARRETT. They are different judges.

Mr. POWERS. You have chancellors?

Mr. GARRETT. We have chancellors and circuit judges.

Mr. POWERS. Perhaps there are a few States that yet have chancellors, as the gentleman has stated they have in his; but in nearly every State in the Union the same judges have both law and equity jurisdiction, and the almost universal rule is that they sit one day in equity and the same judges sit the next day or the next hour as judges at law, and they can change from the law to the equity side, and vice versa, as often as the causes before them require or as may be necessary.

Mr. GARRETT. There are four other States besides Tennessee that have chancellors.

Mr. HEPBURN. Mr. Chairman, I think we are about to make a mistake. The amendment of the gentleman from Massachusetts, in my judgment, ought not to prevail. I was about to ask the gentleman having this matter in charge what objection there would be to striking out all of that part of the paragraph after the word "territory" so as to take away from the State courts entirely jurisdiction over the subject of naturalization?

Mr. BONYNGE. I will say, Mr. Chairman, that that matter was presented to the committee. The committee did not feel that it would be just, for the reason that in many States the Federal courts only sit in one city. In some of the Western States the cities where the Federal court may hold its session is sometimes hundreds of miles from where the alien may live, and would require the alien to go to that place at great expense in order to be naturalized; and we felt that we might put in the provision we have, which gives the State courts of the highest original jurisdiction of every State and the Federal courts the power, so that there would be a court in every county in every State of the United States that could naturalize, and that was as liberal as we could be, and we ought to be that liberal. That was the object of the amendment.

Mr. HEPBURN. I supposed that would be the answer; and yet to my mind it is not a good one. I had hoped that this bill would be regarded as a new departure in the matter of naturalization. Heretofore the naturalization of foreigners has been a farce in this country. I have never known in fifty years of observation of but one refusal when a man applied for naturalization. I think that under the provisions of this bill a great majority of the courts could be convicted of an offense if they continued to naturalize men as they heretofore have done. I find that in section 25 it is provided:

That any person who knowingly aids, advises, or encourages any person not entitled thereto to apply for or to secure naturalization—

Shall be punished, etc. How often have judges admitted men to naturalization when they knew that they had no statutory qualifications, when they knew that they were not well affected toward the institutions of the United States, when they knew that there was no disposition on their part to secure the good order and happiness of the same. They know that often they are profoundly ignorant of the character, institutions, and principles of our Government, and what is necessary to the good order of society. Hundreds and thousands of men every year are naturalized where there is this flagrant disregard of the law. The courts admit men as a matter of course who file applications that are presented to the court, and it is often regarded as a joke rather than anything more serious—this naturalization of a citizen of the United States.

I am hopeful that this inaugurates a new era, that it imposes upon these men who seek naturalization the idea that a boon is being conferred upon them, that there is something in naturalization here that they ought to be suitors for, that they ought to be willing to make sacrifices for; and the idea of bringing up as an imposition upon the alien the consideration of a man having to travel 10, 15, or 100 miles in order to secure naturalization and citizenship in this country is to my mind farcical in the extreme. There are Federal courts everywhere within reasonable limits and within reasonable time.

They have ample opportunity for attending to this duty; they will attend to it if they are required to. Let me remind you that the frauds whenever they occur, the hundreds of men who are fraudulently and unjustly admitted to participation in our citizenship, are perpetrated in the State courts and not in the

Federal courts, and therefore I think if we are to make any change at all, we should go in the other direction and not loosen up the methods of naturalization.

Mr. McNARY. Mr. Chairman, everyone is agreed that we should do all possible to prevent frauds in naturalization, and if a bill can be drafted to bring about that result and make the process more secure it will receive ultimately the almost unanimous vote of this House. But it seems to me that the bill should not be so drafted as to be oppressive to the men who seek naturalization; that the man who seeks it honestly, earnestly, from a desire to become an American citizen should be welcome if he possesses the character and capacity to fulfill the requirements.

Let me say to the gentleman who has just spoken that no case has been adduced on this floor, to my knowledge or in my hearing, where any fraud has taken place in the State courts, but men have arisen on the other side who have testified to fraud in the United States courts. [Applause.]

Mr. BENNET of New York. Will the gentleman yield for an experience?

Mr. McNARY. Certainly.

Mr. BENNET of New York. In my own city, in the city in which I live and represent in part, one judge in one day naturalized 2,500 aliens, and he could not have done it honestly.

Mr. SULLIVAN of Massachusetts. A United States judge?

Mr. BENNET of New York. No; judge of a State court.

Mr. McNARY. That seems to settle that argument so far as the State of New York is concerned. [Laughter.]

Mr. BONYNGE. If the gentleman will yield——

Mr. McNARY. I will yield if the gentleman will extend my time.

Mr. BONYNGE. I will extend it as far as the time I occupy.

Mr. McNARY. Very well.

Mr. BONYNGE. I want to call the gentleman's attention to the fact that Judge B. C. Elliot, of Lafayette, La., was impeached and dismissed from the bench for fraudulent naturalization.

Mr. McNARY. Well, that makes two cases in the State courts where there have been dozens in the United States courts. I want to say that in the State of Massachusetts no accusation has ever been brought against the State courts, and I doubt very much indeed, though two cases have been mentioned, that outside of the large cities—cities like New York—many such accusations can be brought against the State courts. And for this reason, primarily, that the State court is limited in its district, limited in the number of the population which it serves, and the judge appointed to the bench is apt to be acquainted with the citizens of his district and also with the witnesses who come before him. He has a personal acquaintance with the most of them and is in a position to know personally whether or not the statements made by the applicant and the witnesses are correct or not. And from my point of view a court of that character is the most competent court to give naturalization, because it is acquainted with the men and the witnesses who come before it.

I wish to back up the remarks made by the gentleman from Massachusetts [Mr. SULLIVAN] that the superior court of Suffolk County is so crowded with business that originates not only in that county, but in all counties around, that it is a safe assertion that no naturalization will ever take place in that court, and if we can have the jurisdiction conferred upon the lower courts which have seals, under the limitation suggested by the gentleman, the judges of these courts will deal with a population with whom they are familiar and with witnesses with whom they are familiar, and the hardships otherwise imposed upon men in that county who seek naturalization will be done away with.

Let me say to you, gentlemen, it is not a fair thing to an alien who honestly desires to become a citizen that he shall be compelled to pay a large sum of money for that purpose; that he shall be compelled to travel a great distance for that purpose, or that he shall be compelled to wait an undue length of time. Let us make the requirements strict in many respects, but do not make provisions so burdensome and onerous that it will amount practically to the prohibition of an honest man who seeks honorable citizenship in this Republic. [Applause.]

Mr. GRAHAM. Mr. Chairman, I move to strike out the last two words.

Mr. BONYNGE. Mr. Chairman, I move that all debate upon the pending amendment be closed in five minutes.

Mr. SULLIVAN of Massachusetts. Mr. Chairman, pending that motion, I would ask the gentleman if he will agree that I may substitute an amendment exactly similar except that it limits the jurisdiction to $1,000?

Mr. BONYNGE. Yes; I have no objection to that.

Mr. SULLIVAN of Massachusetts. Mr. Chairman, I ask unanimous consent to substitute for the amendment now pending the following amendment, which I send to the desk and ask to have read.

The Clerk read as follows:

Page 3, section 3, add, after the word "unlimited," in line 5, "and all such courts of record having the seal and a clerk with jurisdiction to the extent of $1,000 and next in rank below the nisi prius courts of such State."

The CHAIRMAN. Is there objection to the request of the gentleman from Massachusetts that he substitute the amendment just read? [After a pause.] The Chair hears no objection, and it is so ordered. The question now is on the motion of the gentleman from Colorado that all debate on the pending amendment close in five minutes.

Mr. MANN. Mr. Chairman, I would ask the gentleman to make the time a little longer than that.

Mr. BONYNGE. Well, Mr. Chairman, we have already had a half-hour debate on this amendment; but I will extend that time five minutes longer, and ask in connection with it that the time be equally divided between those in favor of the amendment and those opposed.

The CHAIRMAN. The question is on the motion of the gentleman from Colorado that all debate on the pending amendment be closed in ten minutes, five minutes of which shall be in the control of those in favor of the amendment and five minutes in the control of those opposed to it.

The question was taken; and the motion was agreed to.

Mr. MANN. Mr. Chairman, I hope the Chairman will notify me at the end of two minutes. I fully sympathize with what actuated the gentleman in proposing the provision in the bill. We have a population of more than 2,000,000 people in my city, the city of Chicago, and we are just now creating twenty-seven new courts. Those courts may have and do have in some particulars jurisdiction over millions of dollars' worth of property in certain cases, but they are not courts which have unlimited jurisdiction at law or which have jurisdiction over an unlimited amount in controversy. Those will be barred. The gentleman refers to the fact that we just passed a bill validating naturalization in the criminal courts. The criminal court of our county has jurisdiction to try a man for his life and to order that he be hanged, but you say it is not a court of sufficient importance to naturalize a citizen. It will be a very great hardship, I say, gentlemen, in the city of Chicago upon thousands of people if this bill passes in the way that it reads now.

Mr. NORRIS. Will this amendment let in the courts referred to?

Mr. MANN. I think this amendment will let in those courts except the criminal court. If we have the other courts, very well. It is often a matter of great difficulty now in the city of Chicago to obtain the consent of a judge in an ordinary court to hear a naturalization case at all. I have known men seeking to be naturalized who went to court several times before they could obtain a hearing by the court for that purpose.

[Here the hammer fell.]

Mr. GRAHAM. Mr. Chairman, I favor the amendment restricting the naturalization to the United States courts for the reason that they are able, in my estimation, to take in all the business offered. The courts in the city of Pittsburg have a great deal of naturalization, and the United States court to-day is taking care of all the naturalization cases. The county courts have turned the business over voluntarily to the United States court, and the United States court hears all of the cases, and I want to say, for the benefit of my friend from Iowa [Mr. HEPBURN], who stated he believed he knew of no cases having been turned down by the United States courts, that there are hundreds of cases refused by the United States court in Pittsburg. Judge Buffington, of the United States district court, has a school established for the examination of candidates for naturalization, and the clerk, William T. Lindsey, prescribes certain days during each month when the applicants appear for examination. They are interrogated not only on their knowledge of the English language, but their acquaintance with the salient features of American history. They are put through a catechism that is searching and rigid, and a number of them are excluded. I think that the United States courts are able to handle this matter and do it better than the county courts. I want to state that the naturalization in Allegheny County frequently numbers from one to two hundred cases in a month. In former years, when our county courts naturalized, as the time approached for State and national elections, the Republican and Democratic committees paid the fees for final papers, and the rush upon the courts was terrific, and, of course, under the circumstances, the proper examinations could

not be made, and numbers of ignorant and unworthy applicants slipped through. Now, neither party advances the fees, and all applicants are referred to the United States courts, where, as I said before, the most rigid examinations are required, and, notwithstanding, an immense foreign population is attracted to our great manufacturing center, our new citizens will compare favorably with any section of the Union.

Mr. BONYNGE. Mr. Chairman, in 1903 the Department of Justice appointed a special examiner to examine into naturalization frauds. He made a report, and in that report is found the following language, to which I desire to call the attention of the committee. The special examiner was Mr. Van Deusen. He said:

The evidence is overwhelming that the general administration of the naturalization laws has been contemptuous, perfunctory, indifferent, lax, and unintelligent, and in many cases, especially in inferior State courts, corrupt. I find that it is and has been the practice of judges of State courts to hold evening sessions of court at the behest of political leaders for the sole purpose of naturalizing hundreds of aliens for political purposes, with a full knowledge on the part of the judges that the aliens have been bribed to become citizens and voters by the payment of their naturalization fees by the political organizations. These evils and frauds have existed for years, exist to-day, and will continue to exist and multiply until radical and stringent changes are made in the naturalization laws and a strict supervision of the administration imposed.

Nearly everyone, Mr. Chairman, who has spoken upon this floor to-day in reference to this bill has admitted that in the main these charges are correct; that we have had a very loose and lax system of naturalization in vogue in this country; that many have been naturalized improperly and improvidently and contrary to the provisions of the law. From such investigation as we have been able to give to this question we have concluded that the primary reason for the lax and loose administration of the naturalization laws has been because of the large number of courts of different characters of jurisdiction throughout the United States.

There are to-day some 5,000 different courts in the United States naturalizing aliens. So long, Mr. Chairman, as there are that number of courts engaged in this business we can not hope to have a uniform system of naturalization, and there was never a better demonstration and illustration of that fact than which I called to the committee's attention a few moments ago of what occurred in the city of Chicago. Now, it has not been the aim of the committee to make it difficult or impossible for worthy aliens to become naturalized, so we did not go to the extremes, as many urged us to do, and limit naturalization to the Federal courts. The naturalization of aliens is a Federal matter, and so there were some strong arguments that might be urged now, and were urged upon the committee in favor of limiting naturalization to the Federal courts alone, but the committee did not go to that extreme. On the contrary, we have provided that not only the Federal courts, but that the State courts of the highest original jurisdiction in every State might be authorized to naturalize aliens, and in every county in every State and in every Territory of the Union there is some court of highest original jurisdiction that will sit at different times throughout the year than can naturalize aliens under the provisions of this bill, and therefore I hope, Mr. Chairman, that the amendment that has been offered, and other amendments seeking to add to the courts that may engage in this business, may be voted down and the report of the committee approved by the Committee of the Whole House. I ask for a vote, Mr. Chairman.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Massachusetts.

The question was taken; and the amendment was rejected.

Mr. SULLIVAN of Massachusetts. Mr. Chairman, I offer the following amendment.

The CHAIRMAN. The Clerk will report the amendment.

The Clerk read as follows:

On page 3, line 5, strike out "unlimited" and insert in lieu thereof the following: "$1,000 or over."

The question was taken; and the amendment was rejected.

Mr. CUSHMAN. Mr. Chairman, I offer the following amendment:

On page 2, line 25, strike out the words "the district of" and insert the word "and;" so that it may read "for the Territories of Arizona, New Mexico, Oklahoma, Hawaii, and Alaska."

Mr. BONYNGE. Is Alaska now an organized Territory?

Mr. CUSHMAN. Alaska is an organized Territory, and the Supreme Court of the United States has so decided.

Mr. BONYNGE. Then I have no objection.

The CHAIRMAN. The Clerk will report the amendment.

The Clerk read as follows:

On page 2, line 25, strike out the words "district of" and insert, after the word "Hawaii," the word "and;" so that it will read: "Territories of Arizona, New Mexico, Oklahoma, Hawaii, and Alaska."

Mr. CLARK of Missouri. I would like to ask if you are going to naturalize out in the Hawaiian Islands?

Mr. BONYNGE. Certainly.

Mr. CUSHMAN. That question is not particularly involved, but in this bill the designation of Alaska should be the correct legal designation, and it should be designated as the "Territory of Alaska" and not designated as the "district of Alaska," the Supreme Court having decided in two different cases that Alaska is an organized Territory.

Mr. CLARK of Missouri. There was some judge somewhere, I believe in Oregon, who naturalized a Chinaman out there not long ago, and if there are any more such judges around out there anywhere I am opposed to the amendment.

The question was taken; and the amendment was agreed to.

Mr. GARRETT. Mr. Chairman, I offer the following amendment, and I ask the attention of the gentleman from Colorado to the amendment, as I believe he will have no objection to it.

The CHAIRMAN. The Clerk will report the amendment.

The Clerk read as follows:

Page 3, line 4, after the word "law," insert "or equity, or law and equity."

Mr. BONYNGE. The committee will not object to that amendment.

The CHAIRMAN. The question is on agreeing to the amendment.

The question was taken; and the amendment was agreed to.

The CHAIRMAN. The Clerk will read.

The Clerk proceeded to read:

Mr. WILLIAMS. Mr. Chairman, the Clerk is reading section 4. I have not heard all of section 3 read yet.

Mr. BONYNGE. It has been read.

Mr. WILLIAMS. Then I have an amendment to offer to section 3.

The CHAIRMAN. The gentleman from Mississippi [Mr. WILLIAMS] offers an amendment.

Mr. WILLIAMS. Mr. Chairman, I move to strike out the language on lines 6, 7, and 8, down to and including the word "States," all on page 3.

The CHAIRMAN. The Clerk will report the amendment.

The Clerk read as follows:

On page 3, lines 6, 7, and 8, strike out the following language: "All judges, justices, clerks, and officers of such State courts, when acting in naturalization matters, shall be deemed officers and agents of the United States."

Mr. WILLIAMS. Now, Mr. Chairman, if this language is permitted to remain in the bill, we are making State judges and State clerks elected or appointed as State officers by the States or the people thereof "officers and agents of the United States," confusing two things which the Constitution and our forefathers were very careful, indeed anxious, to demark the one from the other. This bill will then mix them up irretrievably. Under our peculiar system of government each one of our two governmental agencies is supreme within the line of its powers. In the one case powers delegated, and in the other case, powers reserved, and to pass a bill upon any subject whereby officers appointed or elected in a State as State officers are made "officers and agents of the United States"—are made Federal officers—seems to be too plainly obnoxious to require any argument at all. I reserve the balance of my time.

Mr. BONYNGE. Mr. Chairman, I simply desire to say a word in answer to the gentleman from Mississippi [Mr. WILLIAMS]. The naturalization of aliens——

Mr. WILLIAMS. One word, if the gentleman will pardon me. I want to say this, too; in some of the States the State judge, clerks, etc., could not act at all without ipso facto vacating their positions. In Virginia, for example, and in several other States, State officers are forbidden by the constitution or by the laws to hold any office of emolument or profit under the United States Government.

Mr. BONYNGE. Mr. Chairman, under the Constitution the subject of naturalization is delegated to Congress. It is a Federal procedure, and so we might have reported, as I said a moment ago, a provision limiting the courts that could exercise jurisdiction in these matters to Federal courts. We sought to be more liberal and to extend the opportunity to State courts to act in such matters. It is necessary when they do so act, that they act as officers and agents of the United States. It has been held by the Supreme Court, in the case of Houston *v.* Moore, 5 Wheaton, page 1, that the declaration in the United States Statutes that has reference to this matter—

That certain State courts may hear and determine and act upon applications for naturalization is permissive merely, for Congress is without power to interfere with or control State courts except in so far as the Federal courts have appellate jurisdiction.

Now, of course, no State courts can be compelled to act by Congress. It is simply permissive. They may or they may not,

as they see fit, but when they do undertake to act in naturalization proceedings they must act in accordance with the statutes passed by Congress.

Mr. PERKINS. What is it intended exactly to accomplish by the use of this phrase:

They shall be deemed to be officers and agents of the United States?

Mr. BONYNGE. Because we are providing, Mr. Chairman, in other sections of the bill that returns shall be made by the clerks of these courts to the Bureau of Immigration and Naturalization at Washington, and that that Bureau shall have supervisory control over the naturalization proceedings, whether in State courts or in Federal courts.

Mr. PERKINS. And still, of course, if the courts——

Mr. BONYNGE. That they shall receive fees which shall be paid under the provisions of this act.

Mr. PERKINS. That is, the officers of the State courts will receive fees?

Mr. BONYNGE. Certainly; in order that they may be paid for the services they may render in performing this function for the National Government.

Mr. PERKINS. You do not intend to give the judges any fees?

Mr. BONYNGE. No; not the judges, but the judges will be responsible to the National Government for the proper administration of its laws in reference to naturalization.

Mr. PERKINS. Suppose a man who is judge of the State court should misbehave in this capacity, do you think he could be indicted or impeached under a Federal law?

Mr. BONYNGE. Certainly I do; unquestionably.

Mr. MANN. Does the gentleman think he could be impeached under the Federal law?

Mr. BONYNGE. I do not think he could be impeached. I did not notice the word "impeached" in the question.

Mr. MANN. May I ask if this is in the naturalization law?

Mr. BONYNGE. Not that exact language. Under the existing law there is no general bureau for supervising control over this subject.

Mr. MANN. Now, as I understand, there are certain fees to be collected by the clerks of the courts. In the city of Chicago there will be a very large amount of fees to be collected. The clerks are selected under a law fixing their compensation, but if you declare them to be Federal officials do they keep the fees or do they turn them into the treasury of the county, as the State law requires?

Mr. BONYNGE. I suppose the State legislature could regulate that as it saw fit. So far as the Federal Government is concerned, we authorize them to keep a portion of the fees.

Mr. MANN. If they are made Federal officers and you provide that they shall have certain money, can the State law change the law that we pass here?

Mr. BONYNGE. As to the disposition of what money they make from it, I think so.

Mr. MANN. I can not quite see myself the point of having this in. I can see embarrassments that may arise. The gentleman does not question that these officials will re required to make returns in any event, I suppose?

Mr. BONYNGE. I do not think they would have any control or supervision of them, unless they were acting as our officials and our agents, and we want to keep that control or that supervision, or else we can never have a uniform system of naturalization throughout the United States.

The CHAIRMAN. The time of the gentleman has expired.

Mr. FITZGERALD. Mr. Chairman, I ask that the gentleman's time be extended five minutes. I want to ask him a question.

Mr. MANN. I am not through with him myself.

Mr. FITZGERALD. Mr. Chairman, I ask that the gentleman's time be extended five minutes.

The CHAIRMAN. The gentleman from New York [Mr. FITZGERALD] asks that the time of the gentleman from Colorado be extended for five minutes. Is there objection?

There was no objection.

Mr. FITZGERALD. The gentleman is familiar with the laws of the State of New York. Does he not believe that if this particular provision be enacted it will prevent every State court in New York from exercising powers to naturalize under this bill?

Mr. BONYNGE. I know of no reason why it should.

Mr. FITZGERALD. Are not the officials of the State of New York prohibited from accepting or filling any position in the Federal service to which compensation is attached?

Mr. PERKINS. I will state to the gentleman——

Mr. BONYNGE. I do not recall that law in New York. There may be such a one.

Mr. PERKINS. Under the jurisdiction of this act, which is now confined to the judges of the Supreme Court, the only courts which have unlimited jurisdiction, I very much doubt that they would act under the law by which they were pro tento made officers of the Government. I think they would decline the jurisdiction.

Mr. FITZGERALD. Mr. Chairman, I wish to call my colleague's attention to the fact that the clerks of those courts under this bill would be entitled to certain fees, and that in itself would prevent these clerks from acting in the naturalization cases as provided in the bill.

Mr. HINSHAW. They are entitled to fees now.

Mr. BONYNGE. Under some State laws they are.

Mr. SHERLEY. Will the gentleman allow me to ask him a question?

Mr. BONYNGE. I have no further time, but I will answer the gentleman a question.

Mr. SHERLEY. Will the gentleman tell the House what control, in his judgment, the Federal authorities have over clerks and judges in the State courts when they have taken jurisdiction in naturalization matters?

Mr. BONYNGE. Under section 4 of the bill it provides that there shall be an agent of the bureau who shall be authorized to examine the various forms used by these different clerks and officers acting in naturalization proceedings, to examine the records that are kept by them; and, then, under that supervisory control, to see that they are complying with the statute. I suppose the next question the gentleman would ask would be this: Then, presuming that they had violated any of the sections of the bill, what power would the National Government have in the premises? I will answer that question by saying, that if any officer of a State court violates any of the provisions of any section of the bill providing for criminal prosecution, we would ascertain the fact through the examination and we could punish such officer accordingly in the Federal court for such violation.

Mr. SHERLEY. Then you are going to make, by the terms of your bill, a judge of a State court amenable and tryable in the Federal courts, so as to be removed from office by provision of this bill?

Mr. BONYNGE. Why, if the State court acts under this bill, should it become law, he is certainly amenable to the Federal statute. He would be performing a duty which he need not take upon himself unless he saw fit to do so. It is only permissible; but if he takes the responsibility, if he assumes the responsibility, he will be amenable to the Federal Government. I will call attention to the fact that this is not a novel procedure. It has existed heretofore. I think he is amenable under existing statute. I know, in many instances, or at least I recall one at the present time where the Federal Government made the officers of elections in the States officers of the National Government, and if they violated the State laws regulating the election, the supreme court held——

Mr. FITZGERALD. They receive no compensation from the Federal Government for those services?

Mr. BONYNGE. No; they receive no compensation from the Federal Government; neither do they under this bill. They receive it from the applicants who apply for naturalization.

Mr. SHERLEY. The whole illustration the gentleman is using is one of the reasons why some of us are not disposed to mix State and Federal courts together.

Mr. BONYNGE. The gentleman must admit that he is not in accord with the Supreme Court of the United States so far as authority is concerned. He may doubt the wisdom of it, but, so far as the legality is concerned, the Supreme Court of the United States has settled, in my judgment, that proposition.

The CHAIRMAN. The time of the gentleman has expired.

Mr. SHERLEY. I move to strike out the last word.

I desire to say to the gentleman from Colorado that when he has heard me speak as to the constitutionality of the provision it will be time for him to argue the law point. I wanted the committee to know what was being undertaken, because, in my judgment, if it be possible to eliminate this mixing of State and Federal jurisdiction it is a wise thing to do. We have never had the Federal courts interfering with the State courts without the creation of friction, without creating scandal and a creation of evils greater than those they undertook to cure. For my part, I would rather see the provision as to the courts that could grant naturalization limited to Federal courts. I would rather have that than to have the Federal courts interfering with the State courts. Under the fourth section of this bill a judge of a State court would be subject to examination by a Department clerk of the Bureau of Commerce and Labor.

Mr. WILLIAMS. And under section 17 to imprisonment,

Mr. SHERLEY. If the officers of a court of unlimited juris-

diction of a State are to be subject to inquisitorial examination by clerks in the Department of Commerce and Labor, it is high time we abolish the State courts and simply make the whole thing a national government, without any State lines whatever.

Mr. BONYNGE. If the gentleman has not used all of his time, I desire to say in reply that I think the only remedy that could be applied for the condition which the gentleman has argued against is that which he has suggested himself; that either you will have to retain the provision that we have put in this bill, or else you will have to take the other horn of the dilemma and limit the naturalization proceedings to the Federal courts. As between these two propositions, I was in favor of the one that is contained in this bill, and I trust that the committee will be in favor of it.

Mr. WILLIAMS. Mr. Chairman, the gentleman says the only alternative to the provision I have moved to strike out would be to confer exclusive jurisdiction in matters of naturalization upon the Federal courts. I submit that that is not the only remedy, that there is a remedy much more at hand, and that is simply to adopt the pending amendment and strike out the obnoxious language.

Now, Mr. Chairman, the gentleman says he might have provided in this bill, or Congress might provide, that the Federal courts exclusively should have jurisdiction. There is no doubt about that proposition, and if it be a wise thing to do, why, then, go ahead and do it. That is something that we can do; that is something that Congress can do; but this thing that is attempted in this bill to be done is something that Congress ought not to attempt to do. I doubt if it is a thing that Congress can do. Let us take the language and consider it just a minute. What an anomaly it would be. Down in Virginia, for example, or in New York, a State officer acting under this bill, accepting the authority and power conferred upon him by this provision, would by the situation itself, in Virginia under the State constitution and also, as I understand it, in New York under their law, vacate the State office. So much if he doesn't. Then, if he does accept it, he becomes, under provision 17 in this bill, subject to be arrested—the State judge, the clerk of a State court—and thrown into jail by a Federal marshal, and the office to which he has been elected by the people of the State, or appointed by the governor of the State, becomes for the time being vacated by his imprisonment. Thus the machinery of one government, the Federal, can stop the machinery of the other, the State. In the one case the State officer acting vacates the State office by the constitution or law of the State, and in the other case he is torn from the bench and confined in prison by Federal authority.

Mr. WALDO. I would like to ask the gentleman a question.

Mr. WILLIAMS. I will yield.

Mr. WALDO. I want to ask the gentleman if under the present law a State judge or a State clerk could not be prosecuted in any United States court and sent to jail or State prison for a violation of the present naturalization law?

Mr. WILLIAMS. No; he could not as a Federal officer or agent, that I know of. A State court or a State clerk can be arrested as John Smith or Tom Jones like anybody else, carried into a Federal court and tried for a crime, wherever he is charged with one, and the Federal court has jurisdiction, but he could not be arrested for performance or nonperformance of any official duty and carried into a Federal court for that, except where in some cases Federal jurisdiction attaches as when he has violated an injunction or refused to obey a mandamus issuing out of a Federal court having jurisdiction of a subject-matter or something of that sort. But here you confer upon a man judicial power, a State judge, and then upon somebody else—a Federal officer—the right to imprison him in connection with the exercise of that judicial power.

Mr. WALDO. Is there any difference——

Mr. WILLIAMS. You can not arrest a Federal judge for a fault in the exercise of his judicial power, even by the provisions of this bill——

Mr. WALDO. I think that is a mistake if that is true.

Mr. WILLIAMS. I want to say this further, as a Democrat; I do not see how any man who understands even the A B Cs of Democracy can vote for this bill with that clause left in it. It is as absolutely impossible as for a Mohommedan to believe in polytheism.

Mr. CRUMPACKER. Does the gentleman believe that the State authorities could prosecute a State judge or the clerk of a State court for violating a Federal law; and if his theory is right, is it not true that it would necessarily deprive the State courts of the power that the bill seeks to confer upon them to naturalize aliens?

Mr. WILLIAMS. They could, if as a part of his conduct in connection with it he had committed forgery or perjury, or suborned it, or had accepted a bribe, or committed any other act which was a crime under the laws of the State. That is what I say—they can not serve, they would not serve, if I understand the gentleman's question.

The CHAIRMAN. The time of the gentleman from Mississippi has expired.

Mr. CRUMPACKER. Mr. Chairman, I move to strike out the last two words. I confess, Mr. Chairman, that the question discussed by the gentleman from Mississippi is an important one, a serious one, one that I have thought about a great many times in connection with the present system of naturalization. It provides a commingling of the Federal and State power in one officer.

Mr. WILLIAMS. If the gentleman will pardon me, there is no language like this which I propose to strike out in the present law.

Mr. CRUMPACKER. I admit there is perhaps no specific language like that in the present law, but I do not think language designating the State officers as Federal officers and agents for the enforcement of the naturalization law is of any significance whatever.

When a State court or the officers of a State court undertake to administer a Federal naturalization law, by the very nature of the undertaking they become Federal officers or agents in that particular work, and it does not make any difference whether the court shall be specifically designated a Federal court or the clerk a Federal clerk while so engaged or not. They are such whether this law says so or not. We can not add to or take from the fact that an officer who exercises Federal power is a Federal officer or agent in the execution of that power.

Mr. WILLIAMS. Then if that be true, why not strike out the language?

Mr. CRUMPACKER. I do not believe it is of any significance. The whole question resolves itself down to this: Whether Congress shall confer on the State courts the power to naturalize citizens of the United States, with the consent of the States. It can not be done over the objection of the States.

Mr. WILLIAMS. At present what is done under the naturalization laws is this: Congress, without making these people who are State court officials officers or agents of the Federal Government, simply agrees to allow State courts to act, and it accepts without question, in accordance with the comity that invariably prevails between the two systems of government, the result of the deliberations—the judgment—the conclusion of the State courts. This language changes that policy.

Mr. CRUMPACKER. If the gentleman is right in that, we had as well abandon all attempts to prevent fraudulent naturalizations of aliens. Unless the Government that confers citizenship can control the agencies of naturalization, all attempts to prevent fraud will be futile.

Mr. WILLIAMS. It has never thus far even attempted to do it. On the contrary, in comity, it has accepted the conclusions of the State courts, and neither "examined their methods" nor made them Federal "officers and agents."

Mr. GARRETT. Now, the powers to be performed by the State judges and by the Federal judges under the provisions of this act are precisely the same, are they not?

Mr. CRUMPACKER. Precisely the same.

Mr. GARRETT. If a Federal judge is guilty of malfeasance in office in connection with this act, how would he be punished? He can only be punished——

Mr. CRUMPACKER. Allow me to answer the question. The gentleman should not ask and answer the question. There are general laws for the punishment of Federal judges for general malfeasance in office. We can not make general laws to punish State courts and officers. Our power to punish State officers is necessarily confined to their action in the enforcement of Federal laws, and that is the reason for limited penal provisions in this bill.

Mr. GARRETT. Is it not true that the Federal judge could be punished only by impeachment?

Mr. CRUMPACKER. Not always. There are statutes authorizing the indictment and trial of Federal judges for crimes.

Mr. GARRETT. For malfeasance in office?

Mr. CRUMPACKER. Yes; for malfeasance in office. Malfeasance in office covers a great many things.

Mr. WILLIAMS. If the gentleman has the time, right along that line, the Federal Government can impeach a Federal judge. That is its way of getting at him.

Mr. CRUMPACKER. Impeachment is the way to remove him from office, but it is not a punishment for crime. It is a political proceeding to remove a judge from office and is in no

sense a bar to his prosecution in the criminal courts for the acts for which he is impeached.

Mr. WILLIAMS. I understand that a Federal judge who has committed murder can be indicted just the same as John Jones can.

Mr. CRUMPACKER. And if he has received a bribe as a judge he can be prosecuted for bribery.

Mr. WILLIAMS. And if he has committed forgery he can be indicted for that.

Mr. CRUMPACKER. Yes.

Mr. WILLIAMS. But I am talking now about his official conduct. The only way you can get at him for that alone is by impeachment. Either one of two things would follow if this bill put State judges in the place of United States judges. You would either have to impeach a State judge in the United States Senate, which is out of all question—of course you could not do it—or else, if you are going to deal with him at all, you would have to imprison him or fine him.

Mr. CRUMPACKER. The gentleman is entirely mistaken. Impeachment is not a punishment, it is not a criminal proceeding; it is simply a process for removing a man from office. Federal judges are amenable to the criminal laws of the country for bribery and other crimes and malfeasances in office just the same as any other officer is.

Mr. WILLIAMS. Removal from office is a punishment. There may be, after removal, additional punishment. And so would a State judge without this language which I want stricken out be amenable to the criminal laws both of the State and the United States. He can not commit forgery or bribery without punishment. He is punished, however, as a citizen and not as an "officer or agent of the United States."

Mr. BENNET of New York. Mr. Chairman, there are at least two people in jail to-day who would like to have heard this argument which proves that they can not be put in jail for the very thing which they are now serving sentence. One of them is named Lavine and the other Saverino. Both of them have been convicted in cases where this very question came up. In the case of Lavine *v.* United States (128 Fed. Rep., 826), Lavine was naturalized in a criminal court in the city of St. Louis. He was tried in the Federal court.

Mr. LITTLEFIELD. That is a court of criminal jurisdiction.

Mr. WILLIAMS. He was not a judge or a clerk. Nobody is denying that.

Mr. BENNET of New York. The principle is the same.

Mr. WILLIAMS. Oh, no.

Mr. BENNET of New York. If Congress can make one statute extend over a State court, it can make another. The particular statute in this case was the statute in relation to perjury, section 5429, United States Statutes, and the court held there that while as an original proposition it might be good law that the Federal Government could not confer power on a State court, the fact that it had done so and that that jurisdiction had been maintained for a hundred years precluded the court at this late day from raising any such question.

There was a similar case in the courts of the southern district of New York against Savarino, where the same thing was held. The Government can not impose any jurisdiction upon a State court. It can not make the State court naturalize one single alien; but when any judge, with the permission of a State, or any clerk of his court, with the permission of his State, assumes any jurisdiction which the Government tenders to him, then he comes under the jurisdiction of the United States Government and is subject to punishment for violating the statutes.

Mr. CAMPBELL of Kansas. I am informed that the clerk of the court in St. Louis, and also the marshal, their names being Garrett and Dolan, were both convicted and are both to-day serving terms in the penitentiary for fraudulent naturalization in the courts in St. Louis, and that they were convicted in the Federal courts.

Mr. BENNET of New York. Certainly.

Mr. CAMPBELL of Kansas. And these officers, Garrett and Dolan, were State officers elected by the people of St. Louis.

Mr. MANN. The gentleman stated a while ago there was a Louisiana case.

Mr. BENNET of New York. That was Mr. BONYNGE, of the committee.

Mr. MANN. Where was that officer convicted?

Mr. BENNET of New York. I have no personal knowledge of that.

Mr. BONYNGE. My recollection was he was impeached, probably by the State legislature.

Mr. HAYES. I would like to ask the gentleman from New York a question, or, rather, make an observation. Within the past two months, in San Francisco, Cal., the United States district attorney, has prosecuted and sent to the penitentiary a deputy clerk of the court of the county of San Francisco, a State court, for fraudulently naturalizing aliens. He prosecuted him and convicted him and sent him to the penitentiary within the last two months.

Mr. WILLIAMS. Nobody is denying——

Mr. BENNET of New York. I yield to the gentleman from Colorado.

Mr. BONYNGE. And, Mr. Chairman, I would state another instance where clerks of State courts are exercising jurisdiction in Federal matters. In the matter of making proof in all homestead laws, the clerks of the various State courts in the West are authorized, under certain emergencies, to act and to take the proof, and one of the clerks of one of the county courts in my State within the past two months has been convicted and sent to the penitentiary for fraud in the exercise of that jurisdiction.

Mr. BENNET of New York. I yield to the gentleman from Michigan.

Mr. YOUNG. I wish to ask the gentleman from New York this question: Does the gentleman think that this provision about which we are now disputing adds anything to the power or anything to the responsibility of judges, justices, and clerks in offices of State courts if they consent to act in naturalizations if the words were stricken out? In other words, would not they have the same power, would not they act under the same responsibility, would not they be amenable in the same manner to Federal law as if the words were in?

Mr. BENNET of New York. Mr. Chairman, my own individual judgment is they would, but to save the question this language ought to be left in the bill.

Mr. LITTLEFIELD. Allow me to say——

Mr. BENNET of New York. I yield to the gentleman from Mississippi [Mr. WILLIAMS].

Mr. WILLIAMS. The gentleman does not seem to have understood the contention. That John Smith or Savarino or the clerk of the court could be arrested, indicted, tried, and found guilty of forgery or perjury in a Federal court or State court nobody has ever disputed. The proposition that we are making here is this: He was punished for a crime and not because he was an officer or agent of the Federal Government. He was punished because he committed perjury; he was punished because he committed forgery; the individual was punished for the crime and he was punished in a Federal court in one case and in the State courts in many cases. Now, then, the man could be punished whenever he commits a crime whether he is a Federal court clerk or a State court clerk, and it is unnecessary to withdraw the line of demarcation between our two governmental systems in order to punish him for crime.

The CHAIRMAN. The time of the gentleman has expired, and time for debate has expired.

Mr. YOUNG. Will the gentleman yield for a question?

The CHAIRMAN. The time of the gentleman has expired.

Mr. BENNET of New York. Mr. Chairman, I ask unanimous consent that my time be extended long enough to answer this question.

The CHAIRMAN. The gentleman asks that the time be extended for two minutes. Is there objection?

There was no objection.

Mr. BENNET of New York. As far as he went, the gentleman from Mississippi [Mr. WILLIAMS] is absolutely correct. What the man would be arrested and tried and convicted for would be crime. That is everything that a man is ordinarily tried and arrested and convicted for. He could be arrested, tried, and convicted whether this language was in the bill or not.

Mr. WILLIAMS. I beg the gentleman's pardon. A Federal officer can be dealt with by the Federal Government simply for malfeasance in office.

Mr. BENNET of New York. I have quoted two decisions, and as far as the line of demarcation goes, the circuit court of appeals of St. Louis held that the line of demarcation had been extinguished a hundred years.

Mr. WILLIAMS. Would the gentleman mind putting the language of that decision in the RECORD?

Mr. BENNET of New York. I have no objection.

The language referred to is as follows, taken from 128 Federal Reporter, at page 827 et seq.:

> Counsel for the plaintiff in error, however, contends with much cogency and ingenuity that a court of a State has no jurisdiction to admit aliens to citizenship (1) because Congress had no power under the Constitution to grant this authority to such a court; and (2) because, if it had that power, a court of common-law jurisdiction created by a State has no authority to accept or to exercise this power in

the absence of legislative permission so to do from the State which established it. His argument in support of his first position runs in this way: The Constitution provides that "the judicial power of the United States shall be vested in one Supreme Court and in such inferior courts as the Congress may from time to time ordain and establish" (Article III, sec. 1), and that "the judicial power shall extend to all cases" specified in Article III, section 2. Congress has no authority to grant any portion of this judicial power of the nation to any other courts than those created under these sections of the Constitution. (Martin *v.* Hunter's Lessee, 1 Wheat., 304, 328–330; 4 L. Ed., 97; Houston *v.* Moore, 5 Wheat., 1, 27; 5 L. Ed., 19). The admission of aliens to citizenship is a judicial function. It is the exercise of judicial power. (Spratt *v.* Spratt, 4 Pet., 393, 407; 7 L. Ed., 171.) Therefore the Congress has no power to grant to a court of a State the judicial power to admit aliens to citizenship, and section 2165 and all other acts of Congress which by their terms bestowed this authority upon State courts are unconstitutional and void. In support of his second proposition he argues that a court of a State derives all of its powers from the political entity which creates it; that, while such a court may perform judicial functions permitted by national legislation in cases in which the general power to discharge these functions is granted or allowed to it by the legislation of the State which creates it, no new or additional authority can be conferred upon it by the laws of the nation, and none can be exercised by it unless it is granted by the State laws which create the court, and vest and define its jurisdiction, and, inasmuch as the legislation of the State of Missouri has never granted to any court of that State the power or the permission to naturalize aliens in accordance with the laws of the United States, none of the courts of that State may lawfully exercise this authority. To sustain this argument he cites the decisions of the Supreme Court to the effect that where jurisdiction may be conferred upon the national courts by Congress, and that jurisdiction is not made exclusive, the State courts may exercise it if by the Constitution and laws of their State they are competent to take it (Houston *v.* Moore, 5 Wheat., 1, 27; 5 L. Ed., 19; Claflin *v.* Houseman, 93 U. S., 130, 136; 23 L. Ed., 833); the cases in which State courts have declined to sustain actions for fines, penalties, or forfeitures imposed by acts of Congress for the violation of national legislation (U. S. *v.* Lathrop, 17 Johns, 4, 8–10; Ely *v.* Peck, 7 Conn., 239, 244); and the case of Ex Parte Knowles (5 Cal., 300), in which the supreme court of that State held that, while Congress had no power to confer jurisdiction upon the courts of a State to admit aliens to citizenship, yet such courts might exercise that power in cases where its existence was recognized by the legislation of the State which established it.

These propositions and arguments of the counsel for the plaintiff in error are plausible and cogent. They might well have challenged debate—possibly they might have changed the course of legislation and of action—if they had been presented to the Supreme Court one hundred years ago. At this late day, however, after the courts of the States have for more than a century, with the uniform acquiescence and consent of all the departments of the National Government and of the State governments, exercised this authority to naturalize aliens granted to them by the acts of Congress, there is one answer which is equally fatal to both the propositions which counsel for the plaintiff in error here presents. It is that the contemporaneous interpretation of the provisions of the Constitution relative to this subject by those who framed it, the concurrence of statesmen, legislators, and judges in that construction, the acquiescence and uninterrupted practice of all the Departments of the Government in the same interpretation for more than one hundred years, conclusively determine their meaning and effect, and place them beyond the realm of doubt or question. (Stuart *v.* Laird, 1 Cranch, 298, 308; 2 L. Ed., 115; Cohens *v.* Virginia, 6 Wheat., 265, 419; 5 L. Ed., 257; Prigg *v.* Pennsylvania, 16 Pet., 539, 620, 621; 10 L. Ed., 1060; Ex parte Gist, 26 Ala., 156, 164; Dean *v.* Borchsenius, 30 Wis., 237.) In the year 1790 the Congress passed the first act to establish a uniform rule of naturalization. That act empowered any common-law court of record in any one of the States to admit aliens to citizenship upon their compliance with the terms of the law, but gave no such authority to any court of the United States. (1 Stat., 103.) Many of the statesmen who sat in the convention which framed the Constitution were Members of the Congress which passed this law. This act of Congress is therefore a contemporary interpretation—a practical exposition of the meaning and effect—of the grant to Congress of the power to establish a uniform rule of naturalization by the very men who, as the representatives of the people of the United States, gave this authority to the legislative department of the National Government. From the day when this act gave the courts of the States the power to issue certificates of citizenship to qualified aliens to the present moment, through all the legislation and judicial action of more than a century, that grant to the State courts has been maintained undisturbed, and the power thus bestowed has been exercised by the courts of the States with the uninterrupted acquiescence of the legislative, executive, and judicial departments of the nation and of the States. (1 Stat., 414; Act April 14, 1802, c. 28, 2 Stat., 153, 155; Rev. St., sec. 2165; U. S. Comp. St., p. 1329; Claflin *v.* Houseman, 93 U. S., 130, 140, 23 L. Ed., 833; Robertson *v.* Baldwin, 165 U. S., 275, 279, 17 Sup. Ct., 326, 41 L. Ed., 715.)

This contemporaneous, continuous, and uniform affirmance of the constitutionality of the grant to the State courts of this power to naturalize aliens, and this uninterrupted practice of the State courts to exercise the power thus bestowed upon them, are too long continued, too strong, too obstinate to be controlled or shaken now. It is too late to question the constitutionality of the devolution of this authority upon the courts of the States or their jurisdiction to exercise it. Those issues have been settled by prescription and practice, and they are no longer open to debate or question.

Mr. YOUNG. Mr. Chairman, I would like to ask the gentleman from Mississippi this question.

Mr. WILLIAMS. Mr. Chairman, I move to strike out the last three words for the purpose of answering a question.

Mr. YOUNG. I wish to ask the gentleman from Mississippi this question: I agree with him fully in thinking that these words should be stricken out. But now I wish to ask him this: That provided they are struck out and some judge acts corruptly under the naturalization laws, then has the gentleman any doubt that he has been prosecuted under Federal law for his corrupt act?

Mr. WILLIAMS. I have no doubt but that he could be prosecuted in the State court or the Federal court, either one, whichever happens to have jurisdiction.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Mississippi [Mr. WILLIAMS].

Mr. MANN. I am opposed to the amendment offered by the gentleman from Mississippi [Mr. WILLIAMS]. A while ago cases were cited as to punishment of clerks.

Mr. BONYNGE. Yes.

Mr. MANN. Who will punish the judge?

Mr. BONYNGE. The Federal court, in the same way, I should say, if the judge were guilty of a violation of the Federal statute. I do not know of any law that exempts a judge of a State court from obeying a Federal statute when he undertakes to act under the provisions of a Federal statute.

Mr. MANN. If the judge is guilty of crime that is another thing. He can be punished, no matter who he is. But you can not impeach the judge in Congress, and undoubtedly we could not impeach a State judge, although he is deemed a Federal officer, and could the State impeach him when he is a Federal officer? Who will control the judges?

Mr. BONYNGE. The Federal courts.

Mr. GARDNER of New Jersey. I understood that the gentleman in charge of the bill within fifteen minutes to state that in a case of this kind the State of Louisiana did impeach.

Mr. MANN. I beg the gentleman's pardon. With the law as it is now, the judge of the State court enforces the Federal law. That is a matter that is permissive. That has been exercised ever since the foundation of the Government, but here is a proposition to declare that these people when acting as judges in that position are not State officers; they are no longer State officials. They are Federal officers. Now, very plainly the State legislature can not impeach a Federal official, and I do not think that Congress can impeach a State judge.

Mr. BONYNGE. They can not impeach a State judge, but I think we can punish him for the violation of a Federal statute.

Mr. MANN. We can punish him for the violation of the law.

Mr. BONYNGE. That is the way we would have control of him, and that is the only control we would have.

Mr. MANN. He has got to violate a specific law, and you make no provision in here where the judge violates the law, no matter who he may naturalize, if he follows what he calls a judicial interpretation. It is the difference that runs all through legal jurisprudence between the conviction of a crime and impeachment for misdemeanor.

The CHAIRMAN. The time for debate has expired.

Mr. ALEXANDER. Mr. Chairman, I rise to ask that the amendment offered by the gentleman from Mississippi be read.

The CHAIRMAN. The Clerk will read the amendment.

The Clerk again read the amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Mississippi [Mr. WILLIAMS].

Mr. MAHON. Mr. Chairman, I move to amend by striking out the last four words.

The bill makes the clerks and judges Government officers and agents of the United States. Now, the constitution of the State of Pennsylvania prohibits any official in that State acting in the capacity of a Government official, and the same is true in New Jersey.

Mr. PERKINS. And the same in New York.

Mr. MAHON. They can not act under this bill.

Mr. BONYNGE. If the gentleman from New York [Mr. BENNET] desires to make answer in reference to the State of New York, I would like to have him do so.

Mr. BENNET of New York. The gentleman has said there is a provision similar to the one he quotes in the State of New York. There is one somewhat analogous in our State court, and under such a provision they have held that while that language is in the constitution, while judges there are so restricted they can not even run for an office except the judicial office——

Mr. GOLDFOGLE. Will the gentleman pardon an inquiry for a moment?

The CHAIRMAN. The gentleman from Pennsylvania [Mr. MAHON] has the floor.

Mr. BENNET of New York. While the constitution there is so specific that a supreme court judge can not even run for an office except a judicial office, there have been from time to time powers other than those conferred by the constitution conferred on the supreme court judges by legislative action. The judges have exercised those powers; they have been upheld by the court, and they have not been removed or impeached.

Mr. PERKINS. Is it not a fact that in the exercise of all these different parts of jurisdiction they have continued to act as State officers? The trouble with your bill is that when they act in naturalization, you say expressly they shall act not as State officers, but as United States officers.

Mr. BENNET of New York. I think the answer to that is very plain. You can not compel a State court to naturalize an alien, but when a State judge acts under Federal statute he acts with the expressed or implied consent of his own State.

Mr. MAHON. Now answer my question. When you make them officers of the General Government of the United States, they are not acting as State officers?

Mr. BENNET of New York. We do not make them that.

Mr. MAHON. You do.

Mr. BENNET of New York. We say that while performing this function they shall be deemed for this purpose to be Federal officers.

Mr. MAHON. You better strike that out if you want your bill.

The CHAIRMAN. The question is on the amendment.

The question was taken; and the Chairman announced that the noes appeared to have it.

Mr. WILLIAMS. Division.

The committee divided; and there were—ayes 82, noes 35.

So the amendment was agreed to.

The Clerk read as follows:

SEC. 4. That the Bureau of Immigration and Naturalization is authorized from time to time to make or cause to be made by an agent or agents of such Bureau examinations of the methods employed in naturalization proceedings by any court or courts, to copy any records pertaining to naturalization in said court or courts, and to examine under oath in connection with this part of the business of such Bureau any clerk or other person connected with said court or courts, and to make from the records of said court or courts lists of persons who have been or shall be naturalized.

Mr. CAMPBELL of Kansas. Mr. Chairman——

The CHAIRMAN. For what purpose does the gentleman rise?

Mr. CAMPBELL of Kansas. I rise for the purpose of moving to strike out section 4 of the bill.

Mr. Chairman, I would not place the whole responsibility of good citizenship upon courts or officers whose duty it is to see that the citizenship of the United States is guarded in every possible manner when naturalizing aliens. I would preserve a high standard of citizenship by closer inspection of immigrants rather than by creating complicated machinery for the naturalization of those who have been admitted to our shores.

Now, Mr. Chairman, what a humiliating spectacle it would be to see a bureau clerk go into the courts of the several States of the Union clothed with power to take the judge from his bench and the clerk from his desk and put them on the carpet and bring them to book at his will and pleasure. Why, no man has a higher regard for a bureau clerk or chief than I in the exercise of proper power in the bureaus of the Government, but I object to extending their power beyond proper limits. The humiliation is complete when a bureau says to a committee of Congress that a bill ought or ought not to become a law. They may exercise a censorship over legislation, but I object to their saying to a court that it has or has not administered the laws properly or justly.

Mr. OLMSTED. Where does the gentleman find any such power conferred on the Bureau?

Mr. CAMPBELL of Kansas. Section 4 extends the power of the Bureau of Immigration so as to authorize that Bureau "from time to time to make or cause to be made by an agent or agents of such Bureau examinations of the methods employed in naturalization proceedings by any court or courts," and to examine all court officers under oath.

Mr. OLMSTED. That does not authorize him to change it or to do anything to the judge.

Mr. CAMPBELL of Kansas. It authorizes them to go out and make an examination of the methods and proceedings of the courts and to examine all court officers under oath, including, of course, the judge.

Mr. OLMSTED. What is the objection to that?

Mr. CAMPBELL of Kansas. Why, the objection is that it would be humiliating to the courts to be examined by a bureau clerk touching their proceedings and to be praised or censured by him for their action.

Mr. GILBERT of Kentucky. I would like to ask the gentleman if it is not already the privilege of any American citizen to inspect the public records of any court?

Mr. CAMPBELL of Kansas. Certainly it is. Any Government officer has that power to-day. Throughout the whole country the officers of the Government, inspectors of immigration, and officers of the United States courts are arresting and prosecuting those who are charged with violating the immigration laws or the naturalization laws of the country, and they have access to the courts the same as any other officer or any other citizen without the additional and unwarranted authority that is conferred here.

Mr. MANN. Will the gentleman allow me to ask him a question?

Mr. CAMPBELL of Kansas. Certainly.

Mr. MANN. Would the chief of a bureau have the authority to call a judge before him and require him to answer a series of questions now without this law giving him that authority?

Mr. CAMPBELL of Kansas. No; and he ought not to have; but a subpœna of the United States district court would undoubtedly bring a judge or his clerk to court in a proper proceeding just the same as it would bring any other citizen, which would answer every purpose this section could serve, and the whole section ought to go out.

The CHAIRMAN. The time of the gentleman has expired.

Mr. RICHARDSON of Alabama. Mr. Chairman, I offer the following amendment.

The Clerk read as follows:

Amend by inserting after the word "bureau," line 20, page 3, the following words: "within the usual business hours."

Mr. RICHARDSON of Alabama. Mr. Chairman, I have listened to the remarks of the gentleman as to the extensive power given in this paragraph. It certainly seems to me that there ought to be a reasonable limitation put upon the agents of the Bureau of Immigration and Naturalization, and I believe it is but fair and just to put in the words that I have offered in this amendment.

Mr. BONYNGE. Mr. Chairman, as far as the committee is concerned, we are ready to accept the amendment.

Mr. CAMPBELL of Kansas. Mr. Chairman, I insist on my motion to strike out the paragraph.

The CHAIRMAN. Any amendment to perfect the section is in order before the motion of the gentleman from Kansas to strike out the whole section.

Mr. SHERLEY. Mr. Chairman, I offer the following amendment, which I send to the desk.

The CHAIRMAN. The Chair will first put the motion on the amendment of the gentleman from Alabama.

The question was taken; and the amendment was agreed to.

Mr. SHERLEY. I now offer the following amendment.

The Clerk read as follows:

On line 23, page 3, strike out the words "and to examine under oath in connection with this part of the business of such bureau any clerk or other person connected with said court or courts."

Mr. OLMSTED. Mr. Chairman, I offer an amendment to the part proposed to be stricken out.

Mr. SHERLEY. I believe, Mr. Chairman, I have the floor.

The CHAIRMAN. The gentleman from Kentucky has the floor, and the Chair will recognize the gentleman from Pennsylvania afterwards.

Mr. SHERLEY. Mr. Chairman, the purpose of this amendment is to accomplish what is desired by the amendment of the gentleman from Kansas striking out the section, with this distinction: That I do believe it is important that you should have a proper examination made by some Government official looking to the gathering of statistics and information, to see that the courts are properly performing their functions.

Mr. LITTLEFIELD. And looking toward a uniform procedure.

Mr. CRUMPACKER. Does not the gentleman believe that the courts of the United States may now send an officer into the several courts of the States to gather information?

Mr. SHERLEY. I know of no law now existing that authorizes an officer of the United States courts to go in quest of any such information; but it is desired by the proposers of this legislation, as I understand it, to bring about a uniformity in procedure, and in order to accomplish that it is proper that an official of the Department should gather information. The improper point lay in giving that officer the power to put under oath an officer of the State court, and make the clerk and the judge testify as to their procedure. It was undignified; it was humiliating to the State courts and State officials. It ought not to be; but with the amendment I propose adopted, you will then have simply a section authorizing an employee in the Department of Commerce and Labor, from time to time, to make an investigation and examine the records of the court and report back to the Bureau of Commerce and Labor, against which I think no one ought to object.

Mr. BONYNGE. Mr. Chairman, I have consulted with my colleagues on the committee, and we are satisfied to accept as far as we can the amendment offered by the gentleman from Kentucky.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Kentucky [Mr. SHERLEY].

The question was taken; and the amendment was agreed to.

Mr. WILLIAMS. Mr. Chairman, I desire to address the House for a minute upon the subject of the amendment offered